

MONDAY TUESDAY WEDNESDAY THURSDAY **TODAY**

Questions and Comments

VERDICTS & SETTLEMENTS

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Premises Liability S \$2,100,000

For the plaintiff:
Steven R. Cavalli
Omar I. Habbas
For the defendant:
Kevin P. Cody

Santa Clara Superior
Mediator Jack Williams

RESULT DATE: Aug. 5, 2015

Sylvia Ayala-Salamat v. JIT Transportation, et al. (2012-1-CV-235835) 16-JV_96

SETTLEMENT: \$2,100,000

ATTORNEY Plaintiff - Steven R. Cavalli (Gwilliam, Ivary, Chiosso, Cavalli & Brewer APC, Oakland); Omar I. Habbas (Habbas, Amendola & Nasser, San Jose).
Defendant - Kevin P. Cody (Ropers, Majeski, Kohn & Bentley, Los Angeles).

FACTS: Plaintiff Silvia Ayala-Salamat, 47, was injured when an unbolted post from a cyclone fence fell and struck her in the head while she was doing a closing property inspection in the course and scope of her employment with CBRE Property Management on May 2, 2011.

CONTENTIONS: PLAINTIFF'S CONTENTIONS: On May 2, 2011, at 4 p.m., plaintiff met one of her supervisors, Virginia Unruh at the subject property. [REDACTED], JIT's owner, and [REDACTED], general manager, arrived shortly after. Between the time that the JIT employees left the building on Saturday night and the time of the inspection on Monday afternoon, no one had access to the building except for JIT employees. In one corner of the warehouse, the tenant that occupied the space prior to JIT had constructed a chain-link fence enclosure. Plaintiff contended there were two vending machines inside this enclosure. One could enter the enclosure inside the warehouse through the gate on the side of the cyclone fence. There was also an exterior door, through which one could enter from outside the building.

As the inspection proceeded into the warehouse, plaintiff was making notes of things that needed to be repaired. She was walking ahead of JIT's owner and Unruh. Plaintiff and Unruh testified that JIT's general manager was not part of the inspection and was not with them as the inspection proceeded into the warehouse.

As plaintiff approached the fenced enclosure, she went to open what she thought was a gate to the enclosure to make sure it was working properly. It turns out that what she tried to pull on was an anchor post that had originally been adjacent to the gate to the enclosure, and that post had been unbolted from the concrete floor, moved approximately 120 degrees, and left standing in an upright position. It appeared to plaintiff and Unruh that it was actually a gate and there was no way to tell it was not bolted to the ground. When plaintiff tried to open what she thought was a gate, the unbolted portion of the fence fell toward her and the post struck her in the head. While she was dazed and stunned, she thought she was okay and, despite Unruh's request that she drive plaintiff to the hospital or home, plaintiff drove home. The inspection had nearly been completed and plaintiff does not remember the remainder of the inspection. Unruh testified that JIT's owner gave her the keys to the premises at the end of the inspection.

Plaintiff contended that no one but JIT employees had access to the warehouse from the time that they cleaned up on April 30, 2011, to the time of the inspection. Plaintiff contended the vending machines were too wide for the cyclone fence door or the exterior door, which entered into the fenced enclosure. Plaintiff claimed that it was JIT employees that unbolted the post in order to remove the vending machines and just did not bother to re-attach the post. Plaintiff argued that they created a dangerous condition, particularly in view of the fact that JIT's owner and JIT's general manager knew that there would be a final inspection the following Monday with CBRE employees conducting the inspection.

DEFENDANTS' CONTENTIONS: JIT's general manager testified he did not recall who opened the building. JIT's owner testified that he had driven to the CBRE offices that Monday morning and turned in the keys, and that one of the CBRE women opened the building. JIT's owner and JIT's general manager testified that they had been moved to their new office and the vending machines were no longer at the property.

JIT's general manager testified that he was with plaintiff and Unruh as the inspection proceeded into the warehouse.

INJURIES: Plaintiff claimed she suffered a life-altering traumatic brain injury. Although plaintiff does not recall doing so, she drove herself home after the incident. Later that day, she claimed she experienced dizziness, nausea and vomiting and neck pain, which prompted her to go to the ER at Good Samaritan Hospital where a CT scan of her head was read as normal.

Plaintiff attempted to return to work at some point but found she could not tolerate the workplace because of her inability to concentrate and focus and because of headaches and neck pain, and was therefore allowed to work at home four hours per day. In August 2011, her employer had to replace her. Plaintiff claimed she could not drive after the brain injury, which was a significant component of her job. Plaintiff claimed that she had no problem handling the multifaceted aspects of her job for the 20 years prior to her

Friday, January 29, 2016

Litigation**State high court to test rule that civil litigants pay for court reporters**

The state Supreme Court will scrutinize San Diego County Superior Court's policy of requiring litigants in civil lawsuits to pay for their own court reporters, after the Justices agreed to review a medical malpractice case.

State Bar seeks end to case over admission records

The agency plans to argue that a new law should result in a judgment in its favor in a long-running case over admissions records.

Intellectual Property**Federal trade secrets bill gets key U.S. Senate committee approval**

Legislation that would allow civil plaintiffs to bring trade secrets claims in federal court moved a step closer to becoming law Thursday when it passed a U.S. Senate Judiciary Committee vote.

Judges and Judiciary**Brown appoints deputy DA to judgeship in San Diego**

The appointment fills the vacancy created by the retirement of Judge William C. Gentry Jr.

Litigation**Suit filed against Ventura County law enforcement claims civil rights abuses**

Two executives from Santa Clara Waste Water Company have filed suit against Ventura County law enforcement, claiming civil rights abuses and calling for a federal investigation after the executives and their families were "aggressively and vindictively harassed, intimidated, and retaliated against," according to a complaint filed Thursday.

Solo and Small Firms**Local Knowledge**

San Jose-based litigation boutique Bergeson LLP focuses on handling a variety of lawsuits in Silicon Valley, charging lower fees than some of their larger competitors.

Alternative Dispute Resolution**Mediator focuses on people in resolving disputes**

When going into a mediation, San Jose neutral Robert Baines always prioritizes understanding the people involved rather than focusing on the legal issues at play.

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brain injury, but now she was overwhelmed by it all.

As a result of her traumatic brain injury, plaintiff claimed and continues to claim memory loss, inability to concentrate and focus, impaired speech, headaches, photophobia, imbalance, and sensitivity to noise. She claimed she no longer drives and had to move back in wither parents due to her losing her employment. She also claimed depression. The physicians who examined, evaluated and treated plaintiff following the incident uniformly concluded that she was totally disabled from work.

SPECIALS IN EVIDENCE: MEDS: \$67,000 (workers' compensation) Future MEDS: \$700,000 (disputed) LOE: Plaintiff claimed approximately \$1.6 million in wage loss.

RESULT: The case settled for \$2.1 million, with \$250,000 being contributed by the compensation carrier.

OTHER INFORMATION: FILING DATE: Nov. 13, 2012.

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Administrative/Regulatory Dangerous herbal supplements continue to go unregulated

As famed NBA Lamar Odom rebounds from a life-threatening overdose of "herbal Viagra," his ordeal raises important legal issues about consumer safety and the stunning lack of regulation of herbal supplements. By **Brian S. Kabateck and Laura Kelly St. Martin**

Perspective Enforcing advance conflict waivers

Conflicts of interest continue to be the most common alleged legal malpractice error, as well as a basis for disciplinary action. By **Wendy Wen Yun Chang**

Verdicts Become a hero with a modified Rule 26

What is the job description for litigators? It is to get the best results they can for their clients within the facts and the law of the case and the ethics of our profession as promptly and at as low a rate as reasonably possible. By **James P. Gray**

Judicial Profile
Jeffrey Ferguson
Orange County Superior Court Judge (Fullerton)

Environmental Fight to restore valley in Yosemite heads to court

Nonprofit Restore Hetch Hetchy will argue in court that the city's decision a century ago to dam the Tuolumne River and fill Hetch Hetchy valley violates the state's constitution

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