

BGA technology to computer assemblers all over the world. The defense denied inducing others to infringe the patents. According to defense counsel Archie S. Robinson, "the sole evidence of inducement was the defendants' effort to obtain certification of its BGAs from Intel and qualification of its BGAs from several computer assemblers."

INJURIES/DAMAGES FCI sought general damages for patent infringement.

RESULT Hon Hai/Foxconn were found to have infringed two FCI's patents and to have willfully induced others to infringe them. FCI was awarded \$7.98 million, of which \$1.1 million was for direct infringement and the balance was for inducement to infringe.

TRIAL DETAILS Trial Length: 8 days
Trial Deliberations: 18 hours
Jury Poll: 8-0
Jury Composition: 4 male, 4 female; 4 white, 3 Hispanic, 1 Asian

**PLAINTIFF
EXPERT(S)** Alan Cox, Ph.D., economics, San Francisco, CA

**DEFENSE
EXPERT(S)** Vincent O'Brien, economic analysis, San Francisco, CA

POST-TRIAL The defendants' renewed motion for judgment as a matter of law is pending.

—Sidney Bernstein

PREMISES LIABILITY

Gas Station — Negligence — Bystander Recovery

Customer doused with gasoline at ARCO pump

VERDICT	Defense
CASE	Ismael G. Gomez and Tiffany Gomez v. Atlantic Richfield Company (ARCO), Petcon Technologies, Inc. and Goodyear Tire & Rubber Company, No. PC 028694
COURT	Superior Court of Los Angeles County, Chatsworth, CA
JUDGE	Barbara Scheper
DATE	2/25/2004

**PLAINTIFF
ATTORNEY(S)**

William Hanagami, King & Hanagami, Los Angeles, CA
Michael King, King & Hanagami, Los Angeles, CA

**DEFENSE
ATTORNEY(S)**

William T. DelHagen, Murchison & Cumming, Los Angeles, CA (Goodyear Tire & Rubber Co.)
Ryan D. Saba, Law Offices of James R. Rosen, Beverly Hills, CA (Atlantic Richfield Co., Petcon Technologies Inc.)

FACTS & ALLEGATIONS On Nov. 19, 2000, plaintiff Ismael Gomez, 42, a laborer, was attempting to pump gasoline at an Atlantic Richfield Co. (ARCO) gasoline station when the hose disconnected from the gasoline dispenser and doused him with gasoline. Plaintiff Tiffany Gomez, Ismael's daughter, 17, was sitting in the passenger seat at the time of the incident.

Ismael and his daughter, Tiffany, who witnessed the incident, sued ARCO, Chicago; Petcon Technologies Inc, Torrance, Calif., the firm that installed the pump; and Goodyear Tire & Rubber Co. Akron, Ohio, the manufacturer of the hose. They alleged products liability, premises liability, negligence and negligence per se. The products liability claims were based on the plaintiffs' allegations that the hose was defective because there was a rip in it.

ARCO disputed the nature of the occurrence and the extent of the plaintiffs' injuries.

INJURIES/DAMAGES Ismael Gomez claimed that, in addition to the gasoline showering his body, he also consumed some gasoline. He claimed that the gasoline caused him to suffer a rash, loss of taste and smell, an increased risk of cancer, neurological problems, liver damage, kidney problems and post-traumatic stress disorder. He claimed \$11,166 in economic damages.

Tiffany Gomez claimed that she suffered from post-traumatic stress disorder as a result of witnessing the incident. She claimed \$4,220 in economic damages.

The Gomezes sought over \$400,000 in combined noneconomic damages.

ARCO contended that it was not medically possible for this type of incident to have caused Ismael's alleged injuries.

RESULT Prior to trial, Ismael's products liability claim against ARCO was dismissed on summary judgment. The court also granted summary judgment in favor of Petcon Technologies, which was then dismissed from the case. Additionally, the products liability claim against Goodyear was dismissed while a motion for summary judgment was pending.

The case proceeded to trial against ARCO on the negligence, negligence per se, premises liability and negligent infliction of emotional distress causes of actions. The jury found for the defense.

CALIFORNIA/COLORADO

DEMAND	Ismael: \$250,000 CCP § 998 as to Petcon Technologies and \$250,000 CCP § 998 as to ARCO; Tiffany: \$100,000 CCP § 998 as to Petcon Technologies and \$100,000 CCP § 998 as to ARCO
OFFER	Ismael: \$2,501 CCP § 998 from ARCO; Tiffany: \$1,001 CCP § 998 from ARCO
TRIAL DETAILS	Trial Length: 9 days Trial Deliberations: 1 hour Jury Poll: As to Ismael's claim: 11-1 for ARCO on causation; as to Tiffany's claims: 12-0 for ARCO on causation and 12-0 on negligent infliction of emotional distress as a direct and bystander victim
PLAINTIFF EXPERT(S)	Anthony Reading, Ph.D., clinical psychology, Beverly Hills, CA James G. Dahlgren, M.D., occupational, environmental & medical toxicology, Santa Monica, CA Robert Eagan, oil & gas, Kingsport, TN (gasoline pump assembly)
DEFENSE EXPERT(S)	Robert Carnahan, engineering, Los Angeles, CA (gasoline pumps) Samuel Black, M.D., psychiatry, Los Angeles, CA Ashok Jain, M.D., occupational, environmental & medical toxicology, Los Angeles, CA

POST-TRIAL Costs were awarded to Petcon Technologies. ARCO waived its right to obtain costs in exchange for the plaintiffs' waiver of their appellate rights.

EDITOR'S NOTE Plaintiff's counsel did not respond to a faxed draft of this report and a phone call.

—Janelle Foskett

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COLORADO

FRAUD

Colorado Consumer Protection Act — Elder Law

Attorneys fleeced elderly with asset-protection scam

DECISION (P) \$1,678,000

CASE State of Colorado, ex rel. Ken Salazar, Attorney General of the State of Colorado v. Robert Mason and Harry Hochstetler, No. 01 CV 3219
COURT El Paso County District Court, CO
JUDGE Timothy J. Simmons
DATE 2/4/2004

**PLAINTIFF
ATTORNEY(S)** Jay B. Simonson, Colorado Attorney General's Office, Denver, CO

**DEFENSE
ATTORNEY(S)** Jeffrey I. Tompkins, Colorado Springs, CO (Robert Mason)
William C. Speers, Colorado Springs, CO (Harry Hochstetler)

FACTS & ALLEGATIONS The plaintiff is the state of Colorado on behalf of 334 elderly people. In 2000 and 2001, attorneys Robert Mason, Harry Hochstetler and Claude Ray Page invited older Coloradans, through direct mail and newspaper advertisements, to free seminars on estate planning. At the seminars, the attorneys marketed their "family asset protection" plans, claiming that the plans would allow participants to qualify for Medicaid by keeping their assets free from Medicaid income eligibility reviews and limits. The participants paid an average of \$2,000 for the program, but it accomplished nothing for most of them.

The Colorado attorney general's office sued Hochstetler, Mason and Page for violating the Colorado Consumer Protection Act. Page admitted liability prior to the August 2003 trial on liability. Hochstetler and Mason claimed that they did not promote the plan as a way to qualify for Medicaid.

INJURIES/DAMAGES The seniors invested a total of more than \$600,000 with the defendants, and received little or nothing in return.

RESULT Page agreed to pay \$1 million in damages and \$400,000 in civil penalties before the liability trial. At the trial, Judge Timothy J. Simmons ruled that Mason and Hochstetler violated the Colorado Consumer Protection Act and were liable for damages, penalties and attorney fees. Judge Simmons ordered

with State Farm, and all that remained was Dayco's cross-complaint against Neo, who had manufactured the couplings used in 129 of the hose assemblies.

Dayco alleged that Neo was responsible for a change in the composition of the couplings, from all-brass to a bi-metallic combination of steel (nut, ferrule) and brass (stem), and that the type of brass used in the stem (70/30) was subject to corrosion (dezincification), which allowed it to become porous. This, in turn, allowed water to reach the cut end of the hose and wick into the rayon reinforcement. When combined with iron ions from the steel components, this caused the rayon to degrade, leading to the failures.

CLAIMED INJURIES

NA

CLAIMED DAMAGES

According to defendant: Plaintiff sought approximately \$400,000 in contribution and costs from Neo.

SETTLEMENT DISCUSSIONS

According to defendant: Demand: \$403,000. Offer: Waiver of costs in exchange for dismissal with prejudice.

TRIAL EXPERTS

Plaintiff: Raymond J. Claxton, Ph.D., metallurgist, Materials Analysis, Inc., Dallas, TX. Patrick E. Cassidy, Ph.D., polymer science, Texas State University, San Marcos, TX.

Defendant: Wolfgang Knauss, Ph.D, polymer science, California Institute of Technology, Pasadena.

EXPERT TESTIMONY

According to defendant: Plaintiff's experts testified that the use of the rayon reinforcement in the hose was not a defect. Rather, the bi-metallic coupling containing a 70/30 brass stem/insert and a steel nut ferrule was a defective product when it left Neo's hands. Plaintiff's experts further contended that but for the defective couplings, the subject hose failures would not have occurred.

Plaintiff's expert admitted that if he were to design a washing machine inlet hose, he would design it with a useful life of 5 to 10 years. Notably, Whirlpool advises its customers to replace inlet hoses every five years. However, this warning did not appear on Whirlpool washing machines until 1994. None of the subject hoses failed in less than five years.

Defendant's expert conceded that dezincification of the 70/30 brass stem/insert can occur with exposure to steel and did occur in a small percentage of the failed inlet hose assemblies. However, he questioned whether the dezincification allowed water to reach the cut end of the hose, noting that a water path occurred between the stem and the hose in the vast majority of cases. He opined that the rubber hose, crimped against the stem, precluded water from traveling back up the stem to the end of the hose. Furthermore, based

on the observable corrosion of the couplings, it was evident that the more likely cause of water intrusion into the hose in the vast majority of cases was from external sources (e.g., leaking faucet, failed or worn rubber gasket, improper connections by consumers). In addition, he determined that because rayon loses significant tensile strength when wet and continues to degrade over time, it would fail on its own (whether or not iron ions are present) under tight bending stresses (which occur if the machine is pushed up against a wall) and water pressure levels found in domestic water supplies. Therefore, he concluded that the couplings, by themselves, were not defective and performed exactly as would be expected. He was, however, critical of the continued use of rayon in the hoses, particularly when polyester, which does not have the degradation problems of wet rayon, had been available long before the switch was finally made in 1992.

COMMENTS

According to defendant: A number of these failing washing machine inlet hose cases have been brought around the country. Dayco is a party to many of the cases, while Neo is not. This was the first case to go to trial on claims against Neo. As a result of the verdict, Neo is demanding dismissal in all washing machine inlet hose cases in which it has been named as a party.

Defendant has filed a cost bill. Cases SCSC CV786817, CV790286, and CV79403 were consolidated.

11 TD 7th 11

Customer splashed with gasoline when hose dislodges at ARCO station

PRODUCT LIABILITY

Tools/Equipment/Machinery : Tools

PREMISES LIABILITY

Miscellaneous

NEGLIGENCE

Negligent Infliction of Emotional Distress/Miscellaneous

LOS ANGELES COUNTY SUPERIOR COURT

Gomez v. Atlantic Richfield Company, No. PC028694, San Fernando. Barbara M. Scheper. Jury trial: 9 days. Verdict/judgment: 1/30/2004.

VERDICT/JUDGMENT: DEFENSE

As to plaintiff Ismael Gomez, the jury found 11 to 1 in favor of ARCO on the issue of causation. As to plaintiff Tiffany Gomez, the jury found 12 to 0 in favor of ARCO on the issue of causation and on the issue that she was not a proper bystander plaintiff since she was not then aware of the injuries to her father. Vote: Mixed poll. Deliberations: Not reported.

TRIAL COUNSEL

Plaintiff: Michael King, King and Hanagami, Los Angeles. William Hanagami, King and Hanagami, Los Angeles.

Defendant: Ryan D. Saba, Law Offices of James R. Rosen, Beverly Hills. William T. DelHagen, Murchison & Cumming, Los Angeles.

FACTS/CONTENTIONS

According to defendant: A customer was showered with gasoline when a hose disconnected from the pump at an ARCO station. The plaintiffs were Ismael Gomez and Tiffany Gomez. The defendants were Atlantic Richfield Company ("ARCO"); Petcon Technologies, Inc., the company that installed the gasoline pumps; Thrifty Oil Company; and Goodyear Tire & Rubber Company. On the evening of November 19, 2000, plaintiff Ismael Gomez was attempting to pump gasoline at an ARCO gasoline station when the hose disconnected from the gasoline dispenser and doused him with gasoline. He also claimed that he consumed some gasoline. Plaintiff alleged causes of action for product liability, premises liability, negligence, and negligence per se. The product liability cause of action was dismissed prior to trial on summary judgment. Trial proceeded on the causes of action for negligence, negligence per se, and premises liability. Plaintiff Tiffany Gomez, daughter of Ismael Gomez, was sitting in the passenger seat of the automobile at the time of the incident, and alleged a cause of action for negligent infliction of emotional distress as a direct and bystander victim.

Defendant ARCO admitted negligence at trial, but contended that this incident was not the substantial cause of plaintiffs' alleged damages. The court granted summary judgment in favor of Petcon, and it was dismissed prior to trial. Defendant Thrifty Oil was dismissed prior to trial. Defendant Goodyear was dismissed while a motion for summary judgment was pending.

CLAIMED INJURIES

According to defendant: Plaintiff Ismael Gomez: Rash; loss of taste and smell; increased risk of cancer; neurological problems; liver damage; kidney problems; post-traumatic stress disorder. Plaintiff Tiffany Gomez: Post-traumatic stress disorder.

CLAIMED DAMAGES

According to defendant: Plaintiff Ismael Gomez: \$11,166 economic damages; plaintiff Tiffany Gomez: \$4,220 economic damages; over \$400,000 combined non-economic damages.

SETTLEMENT DISCUSSIONS

According to defendant: Plaintiff Ismael Gomez: Demand: \$250,000 (CCP § 998) to defendant Petcon; \$250,000 (CCP § 998) to defendant ARCO. Plaintiff Tiffany Gomez: Demand: \$100,000 (CCP § 998) to defendant Petcon; \$100,000 (CCP § 998) to defendant ARCO. Offer: \$2,501 (CCP § 998) to plaintiff Ismael Gomez from defendant ARCO; \$1,001 (CCP § 998) to plaintiff Tiffany Gomez from defendant ARCO.

TRIAL EXPERTS

Plaintiff: James G. Dahlgren, toxicology, Santa Monica (310) 449-5525. Anthony E. Reading, Ph.D., psychologist, Beverly Hills (310) 277-3545. Robert Eagan, gasoline pump assembly, Rio Vista (707) 374-4340.

Defendant: Askok Jain, director of occupational medicine/toxicologist, Los Angeles County/USC Medical Department of Emergency Medicine, Los Angeles. Samuel Black, psychiatrist, Los Angeles. Robert Carnahan, gasoline pump engineer, Los Angeles.

COMMENTS

According to defendant: Costs were awarded to defendant Petcon. Defendant ARCO waived its rights to obtain costs in exchange for plaintiffs' waiver of their appellate rights.

Ryan D. Saba represented defendants ARCO, Petcon, and Thrifty Oil and provided the information for this report. William DelHagen represented defendant Goodyear.

REAL PROPERTY**11 TD 7th 12****Plaintiff seeks easements for fiber optic cables****REAL PROPERTY**

Eminent Domain

SAN BERNARDINO COUNTY SUPERIOR COURT

Williams Communications, LLC v. Reed, No. SCVS62887, Central. John P. Wade. Bench trial: 2 hours. Verdict/judgment: 8/20/2003.

VERDICT/JUDGMENT: \$900

The judgment condemned the temporary and permanent communications easements to plaintiff and awarded \$900 compensation to defendants. Defendants recovered their costs of suit incurred in the eminent domain action; plaintiff recovered its costs of suit incurred in the quiet title action. Offsetting of the two cost awards resulted in a recovery by plaintiff of \$837. The compensation paid to defendants (\$900 plus statutory interest) was \$1,057. Offsetting of the costs resulted in a total recovery of \$220 by defendants.

TRIAL COUNSEL

Plaintiff: James C. Powers, Nossaman, Guthner, Knox & Elliot, Los Angeles.

Defendant: Michael V. McIntire, McIntire Law Corporation, Big Bear Lake.

FACTS/CONTENTIONS

According to plaintiff: Plaintiff brought an eminent domain action to condemn temporary and permanent telecommunications easements for installation of fiber optic cable

PERSONAL INJURY**PRODUCT LIABILITY
Negligence Per Se****VERDICT:** Defense.**CASE/NUMBER:** Ismael G. Gomez, Tiffany Gomez v. Atlantic Richfield Company, et al. / PC028694.**COURT/DATE:** Los Angeles Superior / February 5, '04.**JUDGE:** Hon. Barbara M. Scheper.**ATTORNEYS:** Plaintiff - Michael P. King, William K. Hanagami (King & Hanagami, Los Angeles).

Defendant - Ryan D. Saba (Law Offices of James R. Rosen, Beverly Hills).

TECHNICAL EXPERTS: Plaintiff - Robert Eagan, gasoline pump assembly.

Defendant - Robert Carnahan, gasoline pump engineer.

MEDICAL EXPERTS: Plaintiff - Anthony E. Reading, Ph.D., psychologist, Beverly Hills; James G. Dahlgren, M.D., internal medicine and toxicology, Santa Monica.

Defendant - Black Samuel, M.D., psychiatrist; Askok Jain, M.D., toxicology/internal medicine, Los Angeles.

FACTS: On the evening of Nov. 19, 2000, the plaintiff Ismael Gomez was attempting to pump gasoline at an ARCO gasoline station when the hose disconnected from the gasoline dispenser doused him with gasoline.

The plaintiff alleged causes of action for products liability, negligence per se and premises liability against ARCO. The plaintiff's product liability cause of action was dismissed prior to trial on summary judgment.

The trial proceeded on the causes of action of negligence, negligence per se and premises liability.

The plaintiff Tiffany Gomez, the daughter of Ismael Gomez, was sitting in the passenger seat of the automobile at the time of the incident and alleged a cause of action for negligent infliction of emotional distress as a direct and bystander victim.

The plaintiffs also filed a products liability and negligence cause of action against Petcon Technologies Inc. which is the company that installed the gasoline pumps.

The court granted summary judgment in favor of Petcon Technologies Inc. and it was dismissed from the case prior to trial.

The plaintiff Ismael Gomez also sued Thrifty Oil Company but subsequently dismissed it as a defendant prior to trial.

Additionally, the plaintiff Ismael Gomez alleged a cause of action for product liability against Goodyear Tire & Rubber Company but subsequently dismissed this defendant while a motion for summary judgment was pending.

PLAINTIFF CONTENTIONS: At trial, the plaintiff Ismael Gomez claimed that in addition to the gasoline showering his body, he also consumed some gasoline.

The plaintiff claimed that the gasoline caused him to incur a rash, the loss of taste and smell, an increased risk of cancer, neurological problems, liver damage, kidney problems and post traumatic stress disorder.

Tiffany Gomez claimed that she also suffered from post traumatic stress disorder.

DEFENDANT CONTENTIONS: The defendant ARCO admitted negligence at trial and contested that the incident was not the substantial cause of the plaintiff's alleged damages.**DAMAGES:** The plaintiff Ismael Gomez alleged \$11,166 in economic damages. The plaintiff Tiffany Gomez alleged \$4,200 in economic damages. At trial, the plaintiffs sought over \$400,000 in combined non-economic damages.**TRIAL JURY:** Length, nine days; poll, 11-1 (in favor of ARCO on the issue of causation as to Ismael Gomez), 12-0 (in favor of ARCO on the issue of causation as to Tiffany Gomez), 12-0 (on the issue that she was not a proper bystander plaintiff since she was not then aware of the injuries to her father).**SETTLEMENT DISCUSSIONS:** The plaintiff Ismael Gomez served a C.C.P. Section 998 demand to the defendant Petcon Technologies for \$250,000. The plaintiff Ismael Gomez also served a C.C.P. Section 998 demand to ARCO for the amount of \$250,000. The plaintiff Tiffany Gomez served C.C.P. Section 998 demands to Petcon Technologies and to ARCO, each for \$100,000. ARCO offered Ismael Gomez \$2,501 (CCP Section 998) and Tiffany Gomez, \$1,001 C.C.P. Section 998.**THE RESULT:** The jury found in favor of ARCO on the issue of causation and that the plaintiff Tiffany Gomez was not a proper bystander plaintiff as she was not

then aware of the injuries to her father. Costs were awarded to Petcon Technologies Inc. The defendant ARCO waived their right to obtain costs in exchange for the plaintiff's waiver of their appellate rights.