



Daily Journal Verdict & Settlements

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## ECG Obtains Jury Verdict for Clients Defrauded by Former Attorney in Real Estate Matter

Orange Superior – May 3, 2002

Hon. Gregory Lewis

**Topic:** Insurance

**Sub topic:** Legal Malpractice

**Sub-sub topic:** Title

### Verdict

\$1,011,172

### Attorneys

Plaintiff – David Robinson, Corey E. Taylor, (Enterprise Counsel Group, Irvine)

Defendant – Gregory H. Halliday, Charles Hargraves (Sedgwick, Delert, Moran & Arnold, Irvine)

### Technical Experts

Plaintiff – Lore Hilburg, Esq. title insurance industry/standard of care; Woodland hills. Mark Tuft, Esq. standard of care, San Francisco; Robert E. Palmer, Esq., damages, Irvine.

Defendant – Paul J. Weinberg, Esq. standard of care, Irvine; Keith Pearson, Esq. title insurance industry, Corona.

### Facts

In 1997, the plaintiffs purchased a plot of land in San Clemente on which they sought to build their retirement home.

In escrow, the plaintiffs learned that a neighbor had previously threatened a lawsuit over a portion of the property.

While going through the entitlement process in 1998 and 1999, the plaintiffs were made aware of a problem with their title.

According to the defendants, the plaintiffs contacted them and they indicated that they would obtain a title report.

The plaintiffs contended that the defendants said they would obtain new insurance protecting the plaintiffs from future lawsuits.

The defendants contended that they said the report would be used in the entitlement process.

Thereafter, the defendants represented the plaintiffs in front of the San Clemente local government.

Once the plaintiffs' building plans were approved, the plaintiffs were sued by their neighbors who had previously claimed an ownership interest in the plaintiff's property. The defendants had not obtained title insurance protecting the plaintiffs from their claims. As a result, and although the plaintiffs ultimately prevailed in that action, the plaintiffs incurred substantial expenses in defending themselves in the underlying lawsuit.

In this action, the plaintiffs sought to recover those fees and costs along with other resulting damages.

## Contentions

The plaintiff contended that the defendants misled the plaintiffs into believing that they were protected against potential future lawsuits via title insurance by repeatedly informing the plaintiffs that the defendants had “eliminated the exception” in the plaintiffs’ title policy.

The plaintiffs alleged that the defendants knew or should have known (and should have disclosed) that proceeding with the building plans without appropriate title insurance was akin to leading plaintiffs before a firing squad—a lawsuit was inevitable. Had the plaintiffs known this fact, they could have taken alternate action.

The plaintiffs further contended that if, in fact, “clean” title insurance was not available, the defendants had an obligation to inform the plaintiffs of this fact to enable them to choose how to proceed.

Finally, the plaintiffs contended that the defendants expressly told the plaintiffs that the defendants had obtained title insurance protecting the plaintiffs while knowing that no such insurance had been obtained.

The plaintiffs asserted claims for intentional misrepresentation, negligent misrepresentation, breach of fiduciary duty, breach of contract and professional negligence.

The defendants denied that they ever informed the plaintiffs that the defendants had obtained clean title insurance.

They claimed that the plaintiffs knew they did not have title insurance for the disputed portion of the property.

The defendants further claimed that the plaintiffs accepted the risk of proceeding with their building

plans while knowing that a title problem and a threat of litigation existed.

Finally, the defendants contended that no title insurer would have issued clean title insurance under the circumstances so the defendants did not cause the plaintiffs any harm.

## Trial Jury

Length, five weeks; deliberation, four days.

## Settlement Discussions

The plaintiffs ordered to settle the case for \$800,000 before trial.

The defendants offered \$500,000 during trial, according to the plaintiffs. According to the defendants, only \$150,000 was offered during trial.

## Other Information

The jury returned a verdict for the plaintiffs on the fraud, breach of fiduciary duty and professional negligence. The plaintiffs were awarded \$561,171 to compensate them for attorneys’ fees and costs incurred in defending the underlying action out of their pocket. The amount was reduced to \$311,171 due to failure to mitigate.

The jury further awarded Charles Cook \$50,000 in general damages, Jean Cook in \$150,000 in general damages and Susan Mulholland \$500,000 in general damages.

The jury returned a verdict for the defendants, by a 12-0 vote, on the breach of contract claim.

Post trial, the plaintiffs were awarded an additional \$395,449 in costs including a post judgment awarded of \$368,016 in attorneys’ fees, for a total award of \$1,406,621.



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