



VERDICTSEARCH TEXAS

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April 12, 2004

VERDICT *of the* WEEK

Medical Malpractice

Transplant patient rejected heart six years after surgery

Verdict Defense

Gunter v. Nguyen

113th District Court,
Harris County

Plaintiffs' Attorneys Jeffrey Lee Hoffman, Vacek & Hoffman, Richmond; Stan Pfeiffer, Pfeiffer & Pfeiffer, Houston

Defense Attorneys John R. Shepperd, Bradford, Koenig, Shepperd & Kerr, Houston; Alton J. Hall, Jr., Epstein, Becker, Green, Wickliff & Hall, Houston; Joel R. Sprott, Munisteri & Sprott, Houston

Full report on page 6

CASES *of* NOTE

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25% OFF
VERDICTSEARCH
when you submit a case.
See centerfold.

Asked Do you believe the words “under God” in the Pledge of Allegiance are unconstitutional and offensive?
&
Answered

Answers on page 29



VERDICTSEARCH TEXAS

BELL COUNTY

WORKPLACE

Construction Accidents — Wrongful Death

Workers drowned whenscaffold fell into lake

MEDIATED SETTLEMENT

\$8,350,000

CASE

Paula DePriest a/n/f of Madison DePriest and Cassidy DePriest, and as Representative of the Estate of James DePriest; Bobby Bates and Sue Bates, and Stacy Bates, Individually and as Representative of the Estate of James Bates, Deceased; Sue Ann Vriseno a/n/f of Allyson Brooke Bates, a Minor; Raymunda Verdeja, Alicia Hernandez Estrada de Rodriguez, Jose Luis Rodriguez, Juan Gabriel Rodriguez, Jose Antonio Rodriguez, Maria Angelica Rodriguez, and Flor Rodriguez, Individually and as Representatives of the Estate of Crispin Rodriguez, deceased v. MW Builders, Inc., EFCO Corp., Trinity Engineering Testing Corporation, Transit Mix Concrete & Materials Company, HDR Engineering, Inc., No. 184649-B
Bell County District Court, 146th, TX
Rick Morris
Nolley Bice
12/15/2003

COURT JUDGE NEUTRAL(S) DATE

PLAINTIFF ATTORNEY(S)

Michael D. Miller, Glover, Miller, Lewis & Prebeg, P.C., Houston, TX (Bobby Bates, Estate of James Bates, Estate of James DePriest, Paula DePriest a/n/f Madison and Cassidy DePriest, Stacy Bates, Sue Bates)
Aubrey R. Williams, Montez, Williams & Baird, P.C., Waco, TX (Alicia Hernandez Estrada de Rodriguez, Estate of Crispin Rodriguez, Flor Rodriguez, Jose Antonio Rodriguez, Jose Luis Rodriguez, Juan Gabriel Rodriguez, Maria Angelica Rodriguez, Raymunda Verdeja)

Fletcher F. Rhodes, Blanks, Greenfield & Rhodes, Temple, TX (Sue Ann Vriseno a/n/f Allyson Brooke Bates)

DEFENSE ATTORNEY(S)

R. Wayne Gordon, Touchstone, Bernays, Johnston, Beall, Smith & Stollenwerck, LLP, Dallas, TX (MW Builders Inc.)
Kristen B. Blanford, Hermes Sargent Bates, LLP, Dallas, TX (MW Builders Inc.)
Bob Burleson, Naman, Howell, Smith & Lee, Temple, TX (EFCO Corp.)
David E. Chamberlain, Chamberlain McHaney, Austin, TX (EFCO Corp.)
Hollye C. Fisk, Fisk & Fielder, Dallas, TX (Trinity Engineering Testing Corp.)
Donald W. Holcomb, Knolle & Holcomb, Austin, TX (HDR Engineering Inc.)
John O'Herren, Sheehy, Lovelace & Mayfield, P.C., Waco, TX (Transit Mix Concrete & Materials Co.)
Christopher Rhodes, Werstein, Smith & Wilson, Austin, TX (HDR Engineering Inc.)
Meredith Presley Wood, Chamberlain McHaney, Austin, TX (EFCO Corp.)

FACTS & ALLEGATIONS On Aug 9, 2000, plaintiffs' decedents James Bates, 26, James DePriest, 38, and Crispin Rodriguez, 63, drowned while working for MW Builders Inc. They were building an intake pumping structure and pipeline in 50 feet of water in Stillhouse Hollow Lake near Belton to pump water to Lake Georgetown for the Brazos River Authority.

The decedents were working on a scaffold near the top of a steel form that was being filled with concrete to create a bridge support column. The bridge would lead to the platform where the pumps were to be located. The concrete for the form was being pumped from trucks on the shore. When the form was nearly full, the stress of the concrete caused the bolts holding the form

together to fail. The entire form then fell into the lake with the decedents still tethered to the top of the scaffold.

The decedents' families and estates sued MW Builders, Leawood, Kan.; EFCO Corp., Des Moines, Ill.; Trinity Engineering Testing Corp. (TETCO), Austin; Transit Mix Concrete & Materials Co., Beaumont; and HDR Engineering, Inc., Atlanta. MW Builders had rented the steel forms used to pour the columns from EFCO. Transit Mix supplied the concrete. HDR was the project engineer. TETCO was the HDR subcontractor with the responsibility of testing the concrete.

The plaintiffs alleged that MW Builders was grossly negligent in too quickly pouring concrete that was too wet, which placed loads on the form beyond its design capabilities. They alleged that EFCO gave inadequate warnings regarding the pour rate to MW Builders' superintendent and that the project engineer, HDR, was aware that EFCO's erection drawings provided an inapplicable pour rate, but failed to verify the type of concrete specified for the job and the pour rate that MW Builders was going to use. They alleged that the TETCO inspector testing the concrete the morning of the pour determined the concrete was too wet, but failed to notify the job superintendent. They alleged that Transit Mix provided concrete that did not meet the job specifications and therefore retarded the set of the concrete so as to allow pressures to develop beyond the capacity of the form.

All defendants, other than MW Builders, blamed the accident on the MW Builders superintendent for ignoring warnings on the pour rate chart provided by EFCO with the steel forms. MW Builders, which was potentially liable only for gross negligence, contended that it was negligent, but not grossly negligent.

INJURIES/DAMAGES *death*

Autopsies showed that the decedents drowned.

The families and estates of Bates, DePriest and Rodriguez sought unspecified damages for the allegedly wrongful deaths.

RESULT In November 2002, the plaintiffs settled at mediation with HDR for \$1.05 million and TETCO for \$550,000.

In March 2003, the plaintiffs settled with MW Builders for \$2 million and EFCO for \$2 million.

On Sept. 24, 2003, the remaining claims against Transit Mix were settled for \$2.75 million. The settlement was approved by the court in December 2003.

PLAINTIFF

EXPERT(S)

Jim Mallory, P.E., safety, Hewitt, TX

Stephen Estrin, safety, Sarasota, FL

Jerome H. Modell, M.D., drowning, Gainesville, FL

Kent Gilbreath, Ph.D., economics, Waco, TX

Joe Fowler, Ph.D., structural, Houston, TX

Mike Effenberger, structural, Houston, TX

Kim Fleisner, structural, Houston, TX

Jeff Travis, structural, Naperville, IL

Eric G. Comstock, M.D., P.A., toxicology, Houston, TX

DEFENSE EXPERT(S)

Bernard Erlin, petrography, Latrobe, PA

Arturo G. Nisperos, petrography, Pleasanton, CA

Richard W. Kistner, P.E., structural, San Antonio, TX

Lawrence Grifis, structural, Houston, TX

Luis Ybanez, P.E., structural, Houston, TX

Robert Navarro, structural, El Paso, TX

Bill Rebel, petrography, Skokie, IL

M. Bharucha, petrography, Skokie, IL

Ronald Burg, petrography, Skokie, IL

—B. K. Silva

Attorney's Fees \$1,190,000

Expenses \$302,600

The remaining \$6,807,400 was paid to the client and medical providers, if any.