

# CALIFORNIA

# JURY VERDICTS WEEKLY

Reporting Verdicts & Settlements Since 1956

THIS BOOK DOES NOT Vol. 1, Issue 38

## SUBROGATION

### Roofer Not Liable For Water Damage Caused by Freak Storm

**VERDICT:** Defense

**CASE** Centennial Insurance Company, et al v. Lee Roofing of Costa Mesa Inc., 01CC03311

**COURT** Superior Court of Orange County, Santa Ana

**JUDGE** Derek W. Hunt

**DATE** 8/28/2002

**PLAINTIFF ATTORNEY(S)** Thomas G. Dunn; Ellison, Nielsen, Knibbs, Zehe & Antas; San Francisco, CA (The America Insurance Company, For The American Insurance Company)  
Diana E. Guzman; Gray & Prouty; San Diego, CA (Employers Mutual Casualty Insurance (Plaintiff-in-intervention), For plaintiff-in-intervention, Employers Mutual Casualty Insurance)  
Marilyn Raia; Bullivant Houser Bailey; San Francisco, CA (Centennial Insurance Company)

**DEFENSE ATTORNEY(S)** Bruce S. Bailey; Dummit, Faber & Briegleb; San Diego, CA (Lee Roofing of Costa Mesa Inc.)  
Christopher B. Dort; Dummit, Faber & Briegleb; San Diego, CA (Lee Roofing of Costa Mesa Inc.)

**FACTS** A unanimous jury refused to hold a roofer that left a job-site uncovered responsible for water damage to the buildings occupants caused by an unforeseeable storm.

The defendant was hired to put on a new roof to a building in which both the Vallejo Maritime Art Gallery and the Newport Beach Veterinary Hospital were located. The defendant removed the original roof prior to beginning installation of a new one. It did not cover the roof to protect it from water intrusion. When the defendant left the jobsite on the afternoon of July 7, 1999, there was no rain in the forecast. In the early hours of July 8, 1999, a sudden, unanticipated and huge thunderstorm occurred at the jobsite. It rained 3.5 times harder than the meteorological definition of "heavy rain" for approximately 10 minutes. The rain-water entered the building through the exposed roof. This caused damage to the Vallejo Maritime Art Gallery and The Newport Beach Veterinary Hospital.

The plaintiffs paid the claims of both the institutions and then sought subrogation. The plaintiffs contended that the defendant was negligent for not checking the weather forecast in areas other than Newport Beach/Orange County Coastal Plan and should have foreseen the possibility of a thunderstorm and therefore covered the roof. The plaintiffs further allege that the storm was a result of the Mexican Sonora monsoon wind patterns that occur during the summer months. Their meteorologist testified that the storm was "foreseeable" and their roofing expert testified that if this were the case, then the roofer had an obligation to cover the roof to protect against water intrusion. The plaintiffs argued that the defendant was the last one to have "control of the roof," and that because of the expensive nature of the contents of the building, it should have taken precautions to cover the roof. Standard of care and custom and practice require it.

The defendant's meteorologist testified (with satellite photographs as evidence) that the thunderstorm was not a result of the Mexican Sonora, but was actually a result of an "individual weather cell" that formed over the Orange County Coastal Plan.

Therefore, it was not a foreseeable storm having blown up from Mexico through Arizona, through Southern California and into Orange County. Further, the first forecast of rain was at 3:30 AM on July 8, and the first rain fell at 5:31 AM, or two hours and one minute later. It argued that even checking the weather forecast as the defendant did on a daily basis would not have changed the end result. Further, the defendant's meteorologist expert testified that the average rainfall for July in Newport Beach over the last 20 years was 1/100 of an inch. Further, there was testimony that the chances of rain on July 8, 1999, in Newport Beach was less than 1% and that even if it were a Mexican Sonora storm, that they only "occasionally" make it into Southern California, and "infrequently" make it to the Newport Beach/Orange County Coastal Plan. Therefore, it was not foreseeable that there would be rainfall.

### INJURIES

Because of the expensive nature of the contents of the building, the insurance companies sought subrogation of \$682,439 in damages and claimed approximately \$180,000 in interest.

**VERDICT** The jury returned a unanimous verdict for the defense.

<b>DEMAND OFFER</b>	Not reported None
<b>PLAINTIFF EXPERT(S)</b>	William Clune; meteorology Mark Vanderslice; construction
<b>DEFENSE EXPERT(S)</b>	Jay Rosenthal; meteorology Steve McKibban; construction