

**TORTS****WRONGFUL DEATH**

Dangerous Condition of Public Property/Drowning

SETTLEMENT: \$500,000.

CASE/NUMBER: Alejandro Trevino Sr., Ana Trevino, Leonardo Trevino v. Merced Irrigation District, et al. / 149096.

COURT/DATE: Merced Superior / June 14, 2007.

MEDIATOR: Howard R. Broadman.

ATTORNEYS: Plaintiff - Mick G. Marderosian (Marderosian, Runyon, Cercone, Lehman & Armo, Fresno).

Defendant - Thomas S. Brazier, Jeffrey F. Oneal (LaMore, Brazier, Riddle & Giampaoli, San Jose).

MEDICAL EXPERTS: Plaintiff - Allan G. Hedberg, Ph.D., psychology, Fresno.

TECHNICAL EXPERTS: Plaintiff - Rick Van Bruggen, Water Resources Consulting Services, Windsor.

Defendant - Paul Ganett, safety engineering; William Rowley, engineering; Stephen Wexler, engineering, Marina del Rey.

FACTS: On May 25, 2005, their mother was supervising Robert Trevino, 4.5 years of age, and his brother, Leonardo, 2.5 years of age, as they played in their backyard in Merced. The Trevino residence and yard was adjacent to an irrigation canal owned and operated by the Merced Irrigation District. As the boys played with a soccer ball, it went into the canal and swirled on the surface of an intake box where the canal goes into an underground pipe system 48 inch in diameter, which was under three feet of water. The inlet to the pipe could not be seen from the surface. The pipe traveled approximately 150 feet under a Merced county road. As Roberto reached for the ball, he fell into the intake box and was immediately sucked into the pipe inlet and drowned.

Leonardo, who recalls seeing his brother's hand reaching for help just before it disappeared, witnessed Roberto's death.

Roberto's recovery was delayed

due to the fact that the sheriff rescue divers would not get into the pipe system until water was drained from the pipe. The pipe inlet was not screened.

Roberto's parents, Alejandro and Ana Trevino and younger brother, Leonardo, sued the Merced Irrigation District for wrongful death and for negligent infliction of emotional distress. The lawsuit was based on Government Code Section 831.8 alleging that the unscreened inlet to the underground pipe system was a latent dangerous condition of public property.

**PLAINTIFFS' CONTENTIONS:**

The plaintiffs alleged that the Merced Irrigation District System failed to maintain an effective risk management program in keeping their canal system (825 miles of canal) safe. The plaintiffs presented evidence suggesting that federal, state and private engineering organizations recommended the screening of underground canal pipe inlets to prevent this type of accident from occurring. The plaintiffs alleged that Merced Irrigation District failed to comply with safety standards recognized in the canal industry.

**DEFENDANT'S CONTENTIONS:**

Merced Irrigation District contended that screening their underground pipe inlets is not the standard in the industry. It alleged that it would not have made any difference in regard to Roberto's drowning since he could not swim and that Ana Trevino was negligent for not supervising her children.

DAMAGES: The plaintiffs alleged damages for the wrongful death of Roberto. Plaintiff Leonardo Trevino recovered damages based on a claim of negligent infliction of emotional distress. The claim was based on general damages only. There were no economic damages alleged.

RESULT: The case settled for \$500,000 three days prior to trial.

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