

WEDNESDAY THURSDAY FRIDAY **MONDAY** TODAY

Previous Next

Bookmark Reprints

This is the property of the Daily Journal Corporation and fully protected by copyright. It is made available only to Daily Journal subscribers for personal or collaborative purposes and may not be distributed, reproduced, modified, stored or transferred without written permission. Please click "Reprint" to order presentation-ready copies to distribute to clients or use in commercial marketing materials or for permission to post on a website.

## Valley Fever costs the state \$12 million

*Solano County jury rules Caltrans hid dangerous conditions*

By Phil Johnson

A jury has awarded \$12 million to five construction workers who contracted Valley Fever, an incurable fungal disease, while working for the state.

The Solano County Superior Court jury concluded Thursday that the California Department of Transportation not only subjected Bugler Construction workers to known hazards, but willfully concealed the dangerous conditions.

After spending seven days expanding a culvert near Route 33 in Kern County, work was halted when the California Department of Fish and Wildlife questioned the Department of Transportation's permit. During the break, all seven employees who had worked on the site fell ill.

A total of seven plaintiffs were named in the suit first filed in 2009, but two were dropped and deported to Mexico when their undocumented status was revealed. *Bugler et. al. v. California Department of Transportation*, FCS037118 (Solano County Super. Ct., filed Aug. 25, 2009).

During the work stoppage, company president Glenn Bugler, himself sick, called the Kern County Department of Public Health in search of an explanation for his sick workforce.

According to Peter W. Alfert of Hinton Alfert & Kahn LLP, who represented the employees, the public health department then told Bugler of the endemic presence of *coccidioides immitis* fungus on the site.

The fungi's spores are known to stick to lungs and lead to a fungal infection known as Valley Fever. During discovery, Alfert learned a different standard of care was applied to Caltrans employees than was applied to third-party contractors.

"The bid for this contract made no mention of required respiratory equipment," Alfert said. "It would have been so easy for Caltrans to let them know of the risk. But that raises costs and could lead to potentially fewer bidders."

In 2007, then-Gov. Arnold Schwarzenegger proclaimed a state of emergency in Kern County after an outbreak of Valley Fever. According to Alfert, Caltrans violated custom and practice of the state when it did not inform Bugler about the presence of dangerous spores.

During the trial, Alfert argued that Caltrans employees knew the project was in a high-risk area and possessed a map, which was not provided to Bugler, marking locations known to host the fungus.

"Safety is the department's top priority," Matt Rocco, a spokesman for Caltrans, said. "While we appreciate the time and effort of the jury in this lengthy trial, Caltrans is carefully evaluating all of its options for appeal."

Alfert did not predict whether the verdict will be appealed, but warned that the facts in the case are damning.

Questions and Comments

NEWS RULINGS VERDICTS

Monday, January 25, 2016

### SPECIAL REPORT

#### New Laws

A list of 2015 California laws and the codes they modified. Plus analysis from leading lawyers.



### Litigation

#### Valley Fever costs the state \$12 million

A jury verdict awarded \$12 million to five construction employees who contracted an incurable disease while working for the state.

### U.S. Supreme Court

#### Replica maker asks Supreme Court to consider Batmobile copyright case

A man sued by DC Comics for making drivable replica Batmobiles is taking his case to the U.S. Supreme Court in an attempt to overturn a 9th Circuit decision that found the Dark Knight's vehicle to be a character and thereby copyrightable.

### Litigation

#### A fight ahead on peremptory challenges

Lawyers and judges across the state are divided on a provision in Gov. Jerry Brown's recently released budget that proposes reducing the number of peremptory challenges in misdemeanor trials from ten to six.

### Environmental

#### Monsanto sues state to avoid putting a cancer warning labels on herbicide

The chemical giant says the state relied on flawed science after it signals that the herbicide should be listed under Proposition 65

### Law Practice

#### Former Munger litigator to lead Wilkinson Walsh's west coast office

Sean Eskovitz, who has been with Munger Tolles since 2005, will lead the new firm's LA office.

### Mergers & Acquisitions On The Move

A weekly roundup of lateral attorney moves, law firm office openings and partner promotions from around California.

### Bar Associations

San Diego  
Heather

DAILY JOURNAL NOMINATION

The one female Bugler Construction employee, who remains disabled and allegedly suffered the greatest harm, will receive \$4.8 million, the highest award.

Bugler, who has since returned to work, will receive \$310,000, the smallest sum.

"Caltrans is responsible for the harm that has occurred because it disregarded the serious and permanent health risks this fungus posed to these individuals," Alfert said. "This award will help these five employees with their ongoing medical expenses, but it does not undo the wrong Caltrans did in this matter."

[philip\\_johnson@dailyjournal.com](mailto:philip_johnson@dailyjournal.com)

[Previous](#)   [Next](#)

NOW ACCEPTING  
**NOMINATIONS**  
TO ALL LISTS

Daily Journal  [CLICK HERE](#)

in group

#### Education

##### **Shifting the risk of higher education**

The reallocation of higher education risk the danger that a student's debt might exceed her ability to repay is the result of two developments. By **Jonathan D. Glater**

#### International

##### **New safe harbor a priority for the EU**

In October 2015, the European Court of Justice issued a ruling that invalidated the safe harbor program for the transfer of personal data from the EU to the U.S. By **Richard Neff**

#### Criminal

##### **MCLE: Admissibility of statements decision tree**

The article aims to provide bench officers and lawyers with a pragmatic and structural approach for analyzing issues surrounding the admissibility of statements under *Miranda*. By Elia V. Pirozzi

#### Intellectual Property

##### **Will California lawyers embrace federal trade secrets law?**

With growing bipartisan support, Congress is inching towards the passage of legislation that would provide litigants a federal civil right of action for the theft of trade secrets. By **Arash Beral**

#### Law Practice

##### **Paralegals playing bigger role in business development**

While it is common for paralegals to oversee case management once a matter is assigned, rarely does a paralegal case manager participate in the pitch process itself or provide case management strategies to potential clients. By **Susan Oder**

#### Judicial Profile

##### **Michael Bishay**

Superior Court Commissioner San Bernardino County (Victorville)

#### Litigation

##### **San Francisco plaintiffs' lawyer hailed as fine choice for lead counsel in VW case**

Elizabeth J. Cabraser, a partner with Loeff Cabraser Heimann & Bernstein LLP, was picked by U.S. District Judge Charles Breyer to lead a 22-member steering committee in the class action against Volkswagen AG over the carmaker's emissions cheating software.