

Reports on trials from California superior and federal district courts.

## ANIMALS

45 TD 10TH 1

### SETTLEMENT — Wild cat spooks horse, causes fatal car accident

#### ANIMALS

Horse/Other

#### PREMISES LIABILITY

Residential Property/Negligent Repair/Maintenance

#### NEGLIGENCE-OTHER

#### PROFESSIONAL MALPRACTICE

Insurance Broker/Agent

#### INSURANCE

Homeowners Policy/Reservation of Rights

#### WRONGFUL DEATH

Adult

#### VENTURA COUNTY SUPERIOR COURT

*Lee v. Sheehan*, Docket number: CIV235463. Judge: Not reported. Trial type: Settlement. Settlement date: 9/27/2007.

#### SETTLEMENT: \$2,000,000

\$1,000,000 policy limits from the Sheehans; \$1,000,000 policy limits from the Carmichaels.

#### COUNSEL

Plaintiff: Roger E. Booth, Booth & Koskoff, Torrance.

Defendant: James N. Procter II, Procter, McCarthy & Slaughter, Ventura. Lisa N. Shyer, Procter, McCarthy & Slaughter, Ventura. Mark A. Weinstein, Veatch Carlson, Los Angeles. Cyril Czajkowski, Veatch Carlson, Los Angeles. Cynthia B. Schaldenbrand, Freeburg, Nettels & Schaldenbrand, Tustin.

Cross-defendant: Greg A. Garbacz, Klinedinst PC, Los Angeles.

#### FACTS/CONTENTIONS

According to plaintiff: Decedent Sam Lee, a 48-year-old real estate agent, was driving along Santa Rosa Road in Camarillo in the early morning hours of February 12, 2005, when a horse ran on to the road and collided with Lee's vehicle. Lee and the horse were killed instantly. Plaintiffs, decedent's 46-year-old wife, 22-year-old son, and 19-year-

old son alleged the corral, owned by defendants Michael and Kathleen Sheehan, in which the horse was kept, was built of inadequate materials and was dilapidated. The dilapidated fence allowed for the horse to easily break through the fence and escape.

Defendants argued that their fence was adequate, given that their horses had never attempted to escape from the property before.

During the course of discovery and investigation, it was learned that a large Siberian tiger had escaped from a wild animal sanctuary and was roaming through Ventura County at the time of the accident. The tiger and its tracks were observed at various locations in Moorpark and Camarillo, both east and west of the Sheehans' property, and both before and after the accident. An animal print was also found on a fence post on the Sheehans' corral. Due to heavy rains at the time, no other animal prints were found.

After settling with the Sheehans for their \$1 million homeowner's insurance policy limits, plaintiffs filed a complaint against defendants Charles and Melinda Carmichael who had rented a mobile home on their property in Moorpark to the owners of the wild animal sanctuary. Plaintiffs alleged the tiger had frightened the Sheehans' horse, causing it to run out into the road and collide with decedent's car. Plaintiffs further alleged that the Carmichaels were negligent in renting their mobile home to a couple with over 20 wild cats, without having obtained a required conditional use permit from the County, without having run a thorough background check on the renters, and without having insisted that the renters install adequate facilities for housing the animals. It was learned that, prior to the accident, a lynx had also escaped from the property. An inspection by the Fish & Game Department found numerous code violations with regard to how the animals were being housed.

The Sheehans argued that it was the tiger that frightened the horse which resulted in the accident.

The Carmichaels argued that there was no evidence connecting the tiger to the escape of the horse. No witnesses observed the tiger in the vicinity of the Sheehans' property around the time of the accident. The Carmichaels' animal tracking expert inspected the paw print on the Sheehans' fence post and concluded that it was from a large dog. A Fish & Game warden inspected the post and concluded that it was from a large cat, but that it appeared to be smaller than the paw of the tiger that had escaped.

There was an issue as to the Carmichaels' insurance coverage. Their carrier defended the case under a reservation of rights, and the Carmichaels filed a cross-complaint against their insurance broker, cross-defendant Bruce Delgado of cross-defendant Delgado Group. The Carmichaels claimed the broker negligently failed to obtain umbrella coverage and a policy covering the mobile home.

As part of the settlement with plaintiffs, the Carmichaels dismissed the cross-complaint.

#### CLAIMED INJURIES

According to plaintiff: Death.

#### CLAIMED DAMAGES

According to plaintiff: \$2.7 million to \$2.9 million loss of financial support.

#### SETTLEMENT DISCUSSIONS

Not reported.

#### EXPERTS

None.

#### COMMENTS

According to plaintiff: The complaint was filed on August 4, 2005. James N. Procter II and Lisa N. Shyer represented the Sheehan defendants. Mark A. Weinstein, Cyril Czajkowski, and Cynthia B. Schaldenbrand represented the Carmichael defendants. Greg A. Garbacz represented cross-defendants Bruce Delgado and Delgado Group.

## CIVIL RIGHTS LAW

### 45 TD 10TH 2

#### Police shooting in meth raid gives rise to excessive force claim

#### CIVIL RIGHTS & CONSTITUTIONAL LAW

Excessive Force

WRONGFUL DEATH

Adult

#### EASTERN DISTRICT FEDERAL COURT

*Estate of Jennifer Lynn Le Blanc v. County of Tulare*, Docket number: 04CV05971(DLB), Fresno. Judge: Dennis L. Beck. Trial type: Jury. Verdict/Judgment date: 3/30/2007.

#### VERDICT: DEFENSE

On May 10, 2006, defendants settled minor Derris Le Blanc's claims for \$42,500, \$10,000 of which was paid as expenses and attorney fees.

On March 30, 2007, a jury returned a verdict in favor of defendants against plaintiff Dennis Le Blanc. Vote: Not reported. Deliberations: Not reported.

#### COUNSEL

Plaintiff: Robert Navarro, Law Offices of Robert Navarro, Fresno. Douglas L. Hurt, Law Offices of Douglas L. Hurt, Visalia. Catherine Campbell, Law Offices of Catherine Campbell, Fresno. Elizabeth Louis Clark, Law Offices of Catherine Campbell, Fresno. Gary Mercier, Law Offices of Catherine Campbell, Fresno. Carolyn D. Phillips, Law Offices of Carolyn D. Phillips, Fresno.

Defendant: Bruce D. Praet, Ferguson, Praet & Sherman, Santa Ana. Justus C. Spillner, McCormick, Barstow, Sheppard, Wayte & Carruth, Fresno. Teresa M. Saucedo, Tulare County Counsel's Office, Visalia.

#### FACTS/CONTENTIONS

According to defendant: On Oct. 12, 2003, members of the Lindsay Police Department served a narcotics search warrant at 491 North Elmwood Ave., Apt. B in Lindsay, California. Defendant Richard Wilkinson and defendant Lynn Anderson focused their attention on a closed bathroom door. Decedent Jennifer Lynn Le Blanc, age 26, was inside the bathroom, which had no interior electric light. Defendant Wilkinson claimed that he saw a figure in a crouched position holding something in her right hand and pointed at him. He saw a flash of light where the object was in the person's hand. He believed the person was about to shoot him. He yelled at the person to say what she held and to get down. Within approximately five seconds of kicking open the door, defendant fired and shot decedent in the upper right chest. Defendant was about to shoot decedent a second time when he noticed that there was nothing in her hands.

Plaintiffs Estate of Jennifer Lynn Le Blanc; Derris Le Blanc; Elizabeth Louise Clark; Dennis Le Blanc; and Gary, Ruby, Tony, Steven, and Jennifer Mercier alleged decedent could not have been perceived as a threat and was never a threat to defendant Wilkinson.

Defendant Wilkinson contended decedent raised her right hand with a chrome, metallic object pointed at defendant Wilkinson. Plaintiffs alleged defendants County of Tulare, the Tulare County Sheriff's Office, the City of Lindsay, the Lindsay Department of Public Safety Police Services, the Tulare County Sheriff Bill Wittman, the Director of Public Safety, Bert H. Garzelli, Richard Wilkinson, Lynn Anderson, Joseph Israel Hinojos, and Jerry Martinez violated decedent's Fourth and Fourteenth Amendment rights in using deadly force against her.

The parties disputed whether defendant Wilkinson made an announcement at the bathroom, whether he kicked in the door, and whether decedent had a "Bic" lighter, which was found in the bathroom, in her hand.

#### CLAIMED INJURIES

According to defendant: Death.

#### CLAIMED DAMAGES

Not reported.