

PG&E, Others Settle Family's Toppled-Tree Suit For \$47.5M

By **Bonnie Eslinger**

Law360 (June 27, 2018, 10:39 PM EDT) -- Pacific Gas and Electric Co., a Northern California county and others have reached settlements totaling \$47.5 million to resolve a lawsuit brought on behalf of a boy who lost his right leg and part of his pelvis after being crushed by a tree while camping.

The boy's counsel called it the largest pretrial personal injury settlement for a single plaintiff in California history.

The incident occurred in 2012, as Zachary Rowe, then 12 years old, was camping with his family at a public campsite in San Mateo County's Memorial Park. In the early morning hours, while the boy was sleeping, a massive tanoak tree fell on his tent, according to his complaint.

Rowe, through his mother, sued San Mateo County, alleging a dangerous condition of public property, and also accused PG&E and its vegetation-management contractor, Western Environmental Consultants Inc., of negligence, claiming they failed to maintain the area near the utility's power lines in a safe condition. The litigation also targeted the county's tree contractor, Davey Tree.

"Here we had the most tragic, horrific of accidents imaginable, a family camping at a site, and a little boy sleeping in a tent and a 72-foot rotten tree comes crashing down and crushes him," said Rowe's attorney, Tim Tietjen of Rouda Feder Tietjen & McGuinn. "And there was no defense to the fact that the tree was rotten to the core."

As a result of the accident, Rowe underwent over 30 surgeries and initially spent over six months hospitalized. Doctors determined that in order to save Rowe's life, a lower-limb amputation, a hemipelvectomy, was required, according to his lawyers. Six years later, Rowe, now 18, uses crutches or a wheelchair to get around, Tietjen said.

San Mateo County and Davey Tree agreed to pay \$30 million, according to Rowe's counsel.

PG&E and WECI settled for \$17.5 million, with the share of the settlement on behalf of PG&E and its contractors entirely funded by the contractor's insurers, a spokesperson for PG&E told Law360 on Wednesday.

"Our thoughts and prayers continue to be with Zachary Rowe and his family. We are pleased that all parties have now reached a settlement in this tragic case," the spokesperson said in an email. "As a

reminder, the incident occurred on county-owned property and the tree did not fall on any PG&E facilities. The safety of our customers and the communities we serve is, and will continue to be, our top priority."

An attorney for Davey Tree, Robert Blum of Nixon Peabody LLP, said Davey's portion of the settlement was \$6 million.

Davey's manager of public relations, Jennifer Lennox, said in a statement, "First, Davey expresses its sympathy to Zachary and his family for his tragic injuries. Second, Davey denies any responsibility for the accident, which occurred five years after its visual inspection for 'imminent hazards' in the park. However, Davey contributed to the overall settlement of the case to avoid the cost and uncertainties of litigation."

During the litigation, the four defendants each asked the court to determine that they were immune from liability, without success, according to Rowe's lawyers. PG&E and San Mateo County both appealed their lower court summary judgment losses.

In April 2017, a California state appellate panel found that PG&E — which owned and maintained an electricity distribution line for a nearby park restroom — did not have immunity under a California law that immunizes landowners that provide free recreation use, because the county charged the family a fee for the campsite. PG&E argued that it had not received payment, but the appellate court rejected that distinction.

The California legislature enacted the law, Section 846, to encourage free public access to property for recreational use, the appellate court said. PG&E's interpretation of the statute, making the immunity contingent not on the payment made, but its receipt, was not supported by the law's test or the legislative purpose, the appellate court held.

"It would also lead to troubling, anomalous results we do not think the legislature intended," the appellate ruling said.

San Mateo County got its dose of bad news from the state appellate court in July 2017. The county contended it was immune under California Government Code Section 831.2, which provides that a public entity or public employee is not liable for an injury caused by a natural condition of any unimproved public property. Rowe's attorneys argued the exemption didn't apply because of the campsite's amenities.

The appellate court said it wouldn't overturn the trial court's denial of the county's motion for summary judgment, concluding, "There are triable issues of fact as to whether the property here was 'unimproved.'"

Given the potential damages in the case, San Mateo County handed the matter to its insurance carriers, who hired outside counsel, Dennis Ward of Ropers Majeski Kohn & Bentley PC, County Counsel John Beiers told Law360.

Ward told Law360 in a phone interview Wednesday, "We maintain and still do that the immunity was applicable. The only conditions that existed there that were arguably 'unnatural' were these picnic tables that you could pick up and move, there was a very small fire pit and there was a small food locker. Those items were about 70 to 80 feet from this tree."

Tietjen said the two appellate court decisions have significant implications and will lead to improved safety conditions at parks and other public places throughout California.

Counsel for WECl declined to comment Wednesday. A company representative could not immediately be reached.

Rowe is represented by Timothy G. Tietjen of Rouda Feder Tietjen & McGuinn and Alan J. Jang of Jang & Associates.

PG&E is represented in-house by Barbara Jean Damlos and by Gregory C. Read of Gough & Hancock LLP.

San Mateo County is represented by Dennis J. Ward of Ropers Majeski Kohn & Bentley PC.

Davey Tree is represented by Robert M. Blum and Aldo E. Ibarra of Nixon Peabody LLP.

Western Environmental Consultants Inc. is represented by Robert A. Morgenstern, Christopher F. Johnson and Philip T.S. Tukia of Maranga Morgenstern APLC.

The case is Zachary Rowe v. Pacific Gas and Electric Company et al., case number CIV515962, in the Superior Court of the State of California for the County of San Mateo.

--Editing by Marygrace Murphy.

All Content © 2003-2018, Portfolio Media, Inc.