

Media Articles on Law Firm

Rancher Suing UC Awarded \$7 Million Says he was libeled in cattle deaths case

*By Jim Haynes
Bee Correspondent
September 9, 1988*

An Alameda County Superior Court jury Thursday awarded Chico rancher George Neary \$7 million in his libel suit against the University of California and three UC Davis veterinarians.

The suit is one of three that arose from the 1978 and 1979 deaths of 500 of Neary's cattle after they were sprayed by state veterinarians with toxaphene to combat a feared infestation of scabies mites.

The Oakland jury found that Neary was libeled by UCD veterinarians Richard McCapes, assistant dean of the School of Veterinary Medicine, and faculty members Charles Hjerpe and Ben Norman. The University of California was named as a defendant because it employs the veterinarians.

The suit had sought \$12 million, \$5 million more than was awarded, said one of Neary's attorneys, Clement Kong of Sacramento.

Neary, 62, a former Santa Clara County real estate investor who purchased his 25,000-acre ranch in Butte and Tehama Counties in 1976, called the trial's outcome a long-shot victory.

"It's one of those things that is against the odds to attack the University of California in California and win," a pleased Neary said in a telephone interview.

Hjerpe, contacted late Thursday, said, "It (the verdict)" was quite a shock. We don't feel like we got fair trial."

Hjerpe said that the case was tried before a "liberal" jury that was "scared stiff of them chemicals and pesticides."

"They were making a political statement" against pesticide use, Hjerpe said. "We would have had a better chance in a more rural setting."

The libel suit against the UCD veterinarians was tried in Alameda County because the University of California is headquartered in Berkeley.

"We're going to appeal it on a number of different grounds, including First Amendment grounds," Hjerpe said.

Korshak, Kracoff, Kong & Sugano, L.L.P.

There were no punitive damages awarded, which means the veterinarians will not be held personally liable for payment of the damages, Hjerpe said.

McCapes declined to comment on the jury verdict and Ben Norman could not be reached for comment.

Neary's lawsuit accused the veterinarians of falsifying a report on why the cattle died in order to cover up the alleged misuse of toxaphene by their colleagues in the state Department of Food and Agriculture.

After the death of the cattle, a UCD team, led by the defendants, studied the incident and released a report absolving the state veterinarians of any blame. Neary's suit accused the UCD veterinarians of libel for picturing him in the reports as an incompetent rancher whose ranching practices resulted in the cattle.

The veterinarians' reports said there was no evidence that any of the cattle, except for one cow, died as a result of toxaphene poisoning.

The UCD veterinarians concluded that inadequate feeding by Neary and complications from calving caused most of the deaths.

The veterinarians made "deliberately false statements," in their report to protect UC's close relationship with state veterinarians and with the chemical and beef industries, Neary's lead attorney, John Kecker of San Francisco, argued before the jury. The defendants' attorney, Leila Moncharsh of San Francisco, sought to convince jurors, that Neary was an inexperienced "gentleman rancher" who bought sick cattle and did not properly care for them.

Toxaphene which is no longer used in California for scabies control was sprayed by Food and Agriculture veterinarians in late December 1978 against Neary's wishes on a herd of cattle he had recently purchased in Klamath, Ore., and brought to his ranch 10 miles north of Chico.

About 100 pregnant heifers and 400 calves died over the following four months from overexposure to the pesticide during the spraying operation and from drinking residue of the chemical accumulated in water on the ranch, according to Neary's lawsuit.

Neary also has a suit pending in U.S. District Court in Fresno against the toxaphene, their supervisors including former food and Agriculture Department chief Richard Rominger and Burroughs Wellcome of Raleigh-Durham, N.C. the manufacturer of toxaphene.

Those veterinarians have a libel suit pending in Tehama Superior Court against Neary and CBS News for allegedly libelous statement made about them by Neary in a broadcast of the CBS program "60 Minutes."

The trial lasted four months. The jury had deliberated since Aug. 6.