



The Voice

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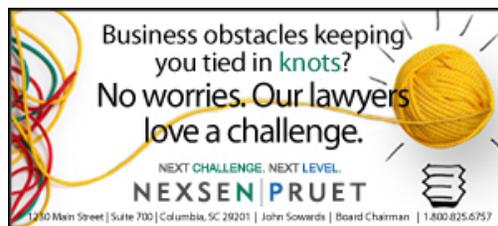
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Brad Bleichner, Lynn Finateri Silbiger, Michael King, and Karen Goldberg



DRI members [Brad Bleichner](#) and [Lynn Finateri Silbiger](#) hit the ground running when they joined **Berkes Crane Robinson & Seal** in early June and tried a four-week, high profile product liability case almost immediately. Mr. Bleichner was lead counsel for the furnace manufacturer alongside his co-counsel, [Karen B. Goldberg](#) of **Selman Breitman**. [Michael King](#) of **Hennelly & Grossfeld LLP** was lead counsel for the circuit board manufacturer. The jury in Santa Monica, California came back on Friday July 11 after four hours of deliberation with a verdict that was a win for the defense.

The case was an admitted liability case for a manufacturing defect that resulted in a claim that the burning circuit board pumped poisonous chemicals through the furnace system into the house. The plaintiffs' attorney black boarded \$2.7 million for the remediation work due to the alleged "contamination" damage to his client's home, personal property, and 32 months of rental in furnished houses in Beverly Hills and Bel Air while their house was being renovated. This included a \$1.5 million subrogation claim from a plaintiff's homeowners' insurance company, a co-plaintiff once the cases were consolidated for trial.

The 60-year-old woman also claimed injury for environmental asthma from the "contamination." The jury was asked to award almost \$1 million for the injury and punitive damages in the amount of \$45 million against the two large corporations.



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This was based upon claims of prior smoke damage claims from the same model of circuit board. Plaintiffs claimed that a recall was necessary and that by failing to recall, the defendants had committed malice.

Rather than awarding over \$48 million as requested by the plaintiffs, the jury awarded \$213,700 for the property damage, \$5000 for the medical bills, and, most importantly, zero for punitive damages. Pursuant to the indemnity agreement, Mr. Bleichner's and Ms. Goldberg's client ultimately had no responsibility for any of the damages.

Defendants were able to systematically attack the extent of smoke damage to the house, both through lay witnesses and the expert testimony of Dr. Mack Quan, a mechanical engineer. Dr. Quan used an exemplar furnace and his testing to demonstrate the small amount of smoke that could get from the separate circuit board compartment into the blower and into the house.

The defense then attacked the lack of hazardous chemicals in the house through their chemist, toxicologist, and environmental safety expert Dr. Edward Faeder. Dr. Faeder identified and quantified the chemicals released from the circuit board and its wiring. He then opined that the chemicals released did not create a risk of harm since they were all well below acceptable standards. If the smoke did not permeate every nook and cranny of the house, as was claimed, then there was no need to take the house down to its studs by removing all of the interior walls, all but one exterior wall, all floors and tiles, the roof, appliances, electrical systems, plumbing systems, etc. and to consider all of their personal property a total loss.

Cross examination of plaintiff witnesses left the impression in the jurors' minds that plaintiffs were overreaching—attempting to unreasonably “modernize” their house to “Brentwood standards”—and that they pressured the claims handler from their homeowners' insurance company into paying them \$1.5 million in policy limits with no testing or basis to support such aggressive remediation.

Dr. Robert McCunney, a Board Certified Doctor of Occupational Medicine, provided compelling testimony that plaintiff did not have asthma and that her symptoms were more likely caused by her smoking history.

The jury unanimously declined to award any punitive damages against the furnace manufacturer and also found in favor of the circuit board manufacturer. Finally, the jury unanimously declined to award damages for Breach of Warranty under the Song Beverly Act. This was an attempt by plaintiffs' counsel to obtain double damages and attorney fees by proving that the product was not merchantable at the time of the sale.

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