

Long Beach Bids to Toss \$22.5 Million Verdict Long Beach Cites Possible Juror Misconduct

By John Ryan

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LOS ANGELES - The case of *McClure v. City of Long Beach* climaxed, so it seemed, in August, when, after an eye-popping five months of deliberations, a federal jury returned a \$22.5 million verdict against Long Beach city officials for interfering with planned Alzheimer's disease care homes.

The verdict was a long time coming. Shirley McClure and her son filed their claims in 1992. The trial before U.S. Magistrate Judge Charles Eick lasted six months, involving thousands of exhibits and testimony from a hundred witnesses.

Then, jury deliberations dragged on, raising eyebrows and turning a complex civil dispute into an absurd legal saga of historical proportions.

Now, the legal epic's next chapter could be - gulp - a brand new trial in Los Angeles federal court. And the jury is once again under scrutiny.

Long Beach's attorneys claim that misconduct by one of the jurors tainted proceedings in McClure's favor, and they've asked Eick to set aside the verdict and hold another trial. At the very least, Long Beach wants Eick to hold an evidentiary hearing to look into possible juror misconduct.

The defense, in a motion filed in December, alleges that juror Steve Ortiz failed to disclose a building code and permit dispute he had with his home city of Pico Rivera during the course of the trial and deliberations - the same type of dispute that McClure had with Long Beach.

Ortiz made matters worse by describing his experiences to fellow jurors throughout the long months of deliberations, the motion claims.

"The fact is, Mr. Ortiz was biased against Defendants because his situation with Pico Rivera was very similar to Ms. McClure's situation with Long Beach," said the motion filed by Richard Terzian of Los Angeles' Bannan Green Frank & Terzian who represents the city. "Moreover, he spread his taint by his repeated discussions of this matter."

Defense attorneys claim that the importance of Ortiz's alleged misconduct "is hard to overstate" because it deprived the defendants "of a fair trial, in perhaps as basic and fundamental manner as can be imagined."

Reached by phone, Ortiz declined to comment.

But Barrett Litt, who represents McClure, said in a response motion that there's no evidence Ortiz did anything wrong, even if he did talk about his experiences with Pico Rivera city government.

"[These] experiences are not extraneous or extrinsic evidence, but are the kinds of personal experiences jurors are expected to draw upon," the motion argues.

Eick is scheduled to hear arguments on the matter Friday. Also pending are earlier motions filed by the Long Beach defendants to have the plaintiffs' award set aside or reduced.

Long Beach's attorneys learned of Ortiz's alleged misconduct from a jury consultant, who was hired by the city after the verdict. The consultant, Kathy Kellerman, interviewed three jurors, two of whom signed declarations for the city.

According to the defense motion, Ortiz described for fellow jurors an enforcement action Pico Rivera had taken against him for building a carport at his home without city approval.

Litt countered, however, that the motion should be denied, in part because the defense has "unclean hands" for having invaded the jurors' privacy by harassing them for interviews after the trial.

"These jurors gave up a great deal to do their public duty," said the motion filed by Litt's firm, Litt Estuar Harrison Miller & Kitson. "The thanks they receive is harassment and misrepresentations in one more defense effort to evade responsibility."

Much is at stake. The \$22.5 million verdict was the largest in the city's history. In addition, Litt has filed a request for \$19 million in attorney fees, which also would fall on the city.

So would the upward adjustment Litt wants Eick to make to the award, to account for the award's "adverse tax consequences" on the plaintiff.

Long Beach's attorneys have opposed these requests and accused the plaintiffs of overreaching.

Both sides spent millions litigating the case and bringing it to trial. But the deliberations are what made the case one for the ages.

In June, jury experts told the Daily Journal that they had never heard of deliberations lasting so long in a civil trial, a sentiment echoed by lawyers associated with the case. By then, however, the jury had been out only 12 weeks. They deliberated six more weeks.

Following the verdict, the Long Beach Press-Telegram published a comprehensive and stirring account of the entire case, with an inside look at the jurors' long months together. The article reported how the jurors often slept or socialized instead of deliberating and how they sometimes drank alcohol during lunches.

The legal issue before Eick turns in part on the parallels between Ortiz's experiences and those of McClure.

In 1990, McClure began converting several homes into Alzheimer's disease care residences. Then, she claimed, city officials successfully killed her project with endless streams of bogus building code citations because residents didn't want the care facilities in their neighborhood.

In their defense, city officials denied discriminating against McClure, saying that they were merely enforcing the building codes, as they do in all land-use projects.

Ortiz's run-in with Pico Rivera administrators appears far less dramatic. The city sent him a list of violations for an illegally built carport, and he apparently is fighting the matter, according to court filings.

The jurors contacted by Kellerman differed on whether Ortiz had generally positive or negative feelings about how Pico Rivera dealt with his building-permit issues.

"Defendants believe that further discovery will show that this was a 'real time' situation, and that Mr. Ortiz was likely describing the events as they were happening," the defense explains in its motion.

Litt points out in his motion that Pico Rivera did not mail Ortiz a list of violations until October 2003, after the trial started, meaning that he did not hide information during voir dire.

Litt's team got its own statement from one of the jurors who spoke to the Long Beach consultant. This juror said that the jury was unanimous on Long Beach's liability before Ortiz related his own experiences, according to the plaintiffs' motion.

Above all, McClure's lawyers insist that discussing one's personal experiences is not evidence of wrongdoing or bias.

"[I]n this circuit and in most courts, personal experience is not extraneous, even if it is experience with the types of matters at issue, so long as that personal experience is not with the parties or facts of the case," the plaintiffs argue.

But attorneys for Long Beach counter that Ortiz crossed the line, becoming in effect an expert for the plaintiffs.

"[Ortiz] was acting as an unsworn witness, not subject to cross examination, on the critical issue of how a city should act in enforcing a building violation," the defense claims in its motion.