

## CENTRAL

uments for the investigation. She obtained a shredder and directed staff to destroy documents. Lindberg complained, but he was ignored. Lindberg was eventually given limited assignments, but he was denied training, files and admittance into staff meetings. Polster also directed staff to ignore Lindberg. She then refused to re-hire Lindberg three times as an adult education consultant.

In 2000, Lindberg had a second heart attack. In 2001, Lindberg, 62, followed his doctor's orders and retired.

Claiming economic and emotional damages, Lindberg sued the department of education, state superintendent of public instruction Delaine Eastin and Polster for whistleblower retaliation and constructive termination, and violations of the California Labor Code and the California Government Code.

In 2002, the case resulted in a \$4.5 million award, which was appealed. On appeal, liability was affirmed, but the damages award was reversed. The trail at issue in this report is the retrial on damages alone.

Lindberg claimed that he was retaliated against for whistleblowing.

Lindberg claimed that he was forced to quit because the stress of the job was harming his health. The two heart attacks confined him to a wheelchair for the rest of his life.

Lindberg also claimed that Eastin tried to minimize his fraud complaints because she was doing political favors for the organizations that were receiving funding and would retaliate against those who interfered with the flow of money to these organizations.

The defense disputed the allegations, denying any damage to Lindberg.

The defense also contended that Lindberg's heart sickness and subsequent retirement were caused by an accumulation of chronic, pre-existing health conditions including coronary artery disease, diabetes, hypertension and obesity, adding that Lindberg's medical records and treating physician did not claim that work-related stress harmed Lindberg's health.

**INJURIES/DAMAGES** *emotional distress; heart*

Lindberg sought \$7.6 million for medical specials, past and future wage loss (through age 70) and emotional distress.

**RESULT** The jury returned a plaintiff verdict, awarding \$7,490,406

**JAMES LINDBERG** \$340,406 future lost earnings  
\$5,125,000 past pain and suffering  
\$2,025,000 future pain and suffering  
\$7,490,406

**TRIAL DETAILS** Trial Length: 2 weeks  
Trial Deliberations: 1.5 days  
Jury Vote: 12-0  
Jury Composition: 3 male, 9 female

**PLAINTIFF  
EXPERT(S)** John D. Hancock, Ph.D., economics,  
Gold River, CA

Abhay Rao, M.D., internal medicine,  
Mesa, AZ

**DEFENSE  
EXPERT(S)** Jay N. Schapira, M.D., cardiology,  
Los Angeles, CA

**POST-TRIAL** Defense counsel filed a motion for a new trial. Plaintiff's counsel moved for attorney fees.

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel and defense counsel.

—Rob MacKay

**SAN JOAQUIN COUNTY****MISHANDLING OF CORPSES****Intentional Infliction of Emotional Distress****Family claimed graveyard  
moved mother's remains**

**VERDICT** \$15,000

**CASE** Tracy Ferguson v. Temple Israel Cemetery,  
No. CV-018651

**COURT** Superior Court of San Joaquin County,  
San Joaquin, CA

**JUDGE** Carter Holley

**DATE** 5/2/2007

**PLAINTIFF  
ATTORNEY(S)** John G. Warner, Law Offices of  
John G. Warner, Corte Madera, CA

**DEFENSE  
ATTORNEY(S)** Daniel P. Costa, The Costa Law Firm,  
Sacramento, CA

**FACTS & ALLEGATIONS** On May 3, 1998, plaintiff's decedent, Laurel Ferguson died from terminal cancer. Her family had purchased burial plot 43 at Temple Israel Cemetery, in Stockton, for her ashes to be buried in. Per Mrs. Ferguson's wishes, her body was to be cremated and buried alongside her father. At some point during the year following Mrs. Ferguson's demise, Temple Israel Superintendent Sandy Senderov discovered that Mrs. Ferguson's ashes had been placed in the wrong plot and he had them relocated to plot 43.

As is customary in the Jewish faith, Mrs. Ferguson's headstone was unveiled on May 3, 1999, one year after the passing. After some time had passed, Mrs. Ferguson's spouse, Roger Ferguson told his son, Darren, that he thought that his deceased

spouse's ashes had been moved at some time between the burial and the unveiling. Darren responded by contacting Temple Israel, which told him that Mrs. Ferguson's ashes had never been moved. Following Roger Ferguson's death in December 2001, Darren and his sister, Tracy, contacted Temple Israel again to inquire about the possibility that their mother's ashes had been moved. On that occasion the cemetery told them to contact gravedigger, James Marrujo, who, in turn, advised them that the ashes were moved.

Claiming that the ordeal inflicted significant emotional distress, Tracy Ferguson sued Temple Israel Cemetery for negligently handling her mother's corpse and intentional infliction of emotional distress.

Plaintiff's counsel argued that Temple Israel Cemetery knowingly violated the tenets of the Jewish faith by disturbing Mrs. Ferguson's ashes during the year following her death. Counsel asserted that the mishandling of Mrs. Ferguson's corpse in that manner caused her daughter Tracy's injuries.

Counsel for the defense contended that the relocation of Mrs. Ferguson's ashes was proper and that notifying the family of the relocation was not required pursuant to Calif. Health and Safety Code § 7528.

**INJURIES/DAMAGES** *emotional distress*

Plaintiff's counsel argued that Tracy had suffered a significant and serious level of emotional distress because of the relocation of her mother's ashes. Tracy underwent about three months of psychological counseling in order to treat the injury. Plaintiff's counsel sought to recover \$1,200 in medical specials to pay for the counseling and another \$6,500 in damages to pay for a psychological evaluation ordered by plaintiff's counsel. Counsel also sought damages for past pain and suffering damages requesting that the jury award Tracy up to \$150,000 in damages for her claim against Temple Israel Cemetery.

Counsel for the defense argued that the primary source of Tracy's emotional distress was not the relocation of her mother's ashes but, rather, stressors related to her family and work. Counsel for the defense called Tracy's treating physician who opined that 10% of Tracy's emotional distress developed as a result of the relocation of her mother's ashes.

**RESULT** The jury found that Temple Israel Cemetery was negligent in the handling of Mrs. Ferguson's remains but not liable for intentionally inflicting Tracy's emotional distress. They awarded Tracy \$15,000 in medical and pain and suffering damages.

**TRACY FERGUSON** \$15,000 emotional distress

**DEMAND** \$75,000  
**OFFER** \$15,001 CCP 998  
 \$25,000 at trial

**INSURER(S)** Safeco Insurance Company of America for Temple Israel Cemetery

**TRIAL DETAILS** Trial Length: 6 days  
 Trial Deliberations: 4 hours  
 Jury Vote:  
 10-2 on negligence  
 9-3 against intentional infliction of emotional distress  
 10-2 on damages  
 Jury Composition: 9 female 3 male

**PLAINTIFF EXPERT(S)** Craig West, psychology/counseling, Yuba City, CA

**DEFENSE EXPERT(S)** Donna Raschke, Ph.D., psychology/counseling, Healdsburg, CA

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's and defense counsel.

-Joshua Couzens

**NORTHERN CALIFORNIA**

**CONTRA COSTA COUNTY**

**WORKERS' COMPENSATION**

**Premises Liability — Products Liability**

**Laborer fell while loading flatbed, hit head on ceiling**

**DECISION** Defense

**CASE** Kenneth Johnson v. John I Inc., No. CIV MSC05-022

**COURT** Superior Court of Contra Costa County, Martinez, CA

**JUDGE** Joyce Cram

**DATE** 12/21/2006

**PLAINTIFF ATTORNEY(S)** John K. Crowley, Tenenbaum Crowley & Brereton, San Jose, CA (Kenneth Johnson)  
 Mark W. Thorndal, Hanna, Brophy, MacLean, McAleer & Jensen LLP, Oakland, CA (Mainstay Business Solutions (Intervener) d/b/a Labor Connection)