

## CENTRAL

required by the Labor Code.

The jury also determined that Drobny Law engaged in malice, oppression or fraud, entitling Gamayo to punitive damages.

The jury awarded \$38,755.48.

**DESEREE GAMAYO** \$10,524.48 past lost earnings  
\$20,000 punitive damages  
\$2,231 Unpaid wages  
\$4,000 Penalties  
\$2,000 Emotional distress  
\$38,755.48

**DEMAND** \$70,000  
**OFFER** \$20,000 (CCP 998)

**TRIAL DETAILS** Trial Length: 10 days  
Trial Deliberations: 1.5 days

**POST-TRIAL** The plaintiff is entitled to statutory attorney fees on all her prevailing claims.

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

—Kristen V. Brown

**PRODUCTS LIABILITY****Negligent Misrepresentation — Design Defect****Contractor sued manufacturer after coatings failed, peeled off**

**VERDICT** \$40,375  
**ACTUAL** \$35,375

**CASE** James Macklin d/b/a James L. Macklin Construction v. Americrete Inc., a California Corporation, Industrial Product Formulators of America Inc. and Does 1 to 100, No. 34-2008-00022710  
**COURT** Superior Court of Sacramento County, Sacramento, CA  
**JUDGE** Kevin R. Culhane  
**DATE** 2/8/2010

**PLAINTIFF ATTORNEY(S)** Chad Tapp, Porter Scott, PC, Sacramento, CA  
Kayla Villa, Porter Scott, PC, Sacramento, CA

**DEFENSE ATTORNEY(S)**

Daniel P. Costa (lead), The Costa Law Firm, Gold River, CA (Americrete Inc.)  
Doreen R. Altman, The Costa Law Firm, Gold River, CA (Americrete Inc.)

**FACTS & ALLEGATIONS** From 2004 to 2006, plaintiff James Macklin, a licensed general contractor operating as James L. Macklin Construction, entered into various contracts to apply decorative coatings to clients' outdoor concrete patios, driveways and pool decks in Sacramento and Placer counties. He used a concrete-coating product purchased from Americrete Inc. to perform the contracts.

Soon after completing the work, Macklin was informed that the decorative coatings he had applied were failing, delaminating and peeling off.

Macklin sued Americrete and the product manufacturer, Industrial Product Formulators of America Inc. He alleged negligence, negligent misrepresentation, defective product, breach of express warranty, breach of implied warranty of merchantability and breach of implied warranty of fitness. (Before trial, Industrial Formulators settled out for \$5,000.)

Plaintiff's counsel contended that a certain Americrete product, which he claimed was defective, caused the failures, delaminations, fading and peeling. Counsel contended that the product was not fit for its intended purpose.

Americrete argued that Macklin was negligent in his preparation of the concrete surface and application of the products. Defense counsel argued that Macklin's lack of knowledge, skill and experience caused of his job failures.

**INJURIES/DAMAGES** Plaintiff's counsel asked the jury for more than \$600,000 in damages and costs Macklin reportedly incurred from having to make repairs on failed jobs.

**RESULT** Though the jury found for Americrete on five of the six causes of action, the jury found in favor of Macklin on the negligence claim.

The jury awarded \$40,375, which was reduced by the \$5,000 settlement with Industrial Formulators.

**INSURER(S)** Golden Eagle for Americrete

**TRIAL DETAILS** Trial Length: 5 days  
Trial Deliberations: 1 day  
Jury Vote: 12-0 for defense on negligent misrepresentation, products liability (defective product), breach of express warranty, breach of implied warranty of merchantability and breach of implied warranty of fitness; 12-0 for plaintiff on negligence  
Jury Composition: 9 male, 3 female

**PLAINTIFF  
EXPERT(S)** William C. Thomas Jr., appraisal,  
El Dorado Hills, CA

**DEFENSE  
EXPERT(S)** Paul Porreca, concrete,

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel and defense counsel. Counsel for Industrial Formulators was not asked to contribute.

—Jaclyn Stewart

## MEDICAL MALPRACTICE

**Failure to Monitor — Failure to Treat — OB-GYN**

# Treatment failure to blame for emergency surgery need: pltf

**VERDICT** Defense

**CASE** Renee Abella and Mya Garcia v. John O. Womach, Gregory E. Douglas, Sutter Health Sacramento Sierra Region and Sutter Memorial Hospital, No. 07AS01274

**COURT** Superior Court of Sacramento County, Sacramento, CA

**JUDGE** Alan G. Perkins

**DATE** 1/26/2010

**PLAINTIFF  
ATTORNEY(S)** Michael K. Pazdernik, Adams & Corzine,  
Sacramento, CA

**DEFENSE  
ATTORNEY(S)** Paul R. Baleria, Low McKinley Baleria  
Weber & Salenko, LLP, Sacramento, CA

**FACTS & ALLEGATIONS** On June 1, 2006, plaintiff Renee Abella, 24, a certified nursing assistant, was admitted to Sutter Memorial Hospital for a scheduled Caesarean section by her primary OB-GYN. The surgery went forward, and Abella's son was born.

On June 2, Abella's regular OB-GYN followed her and then OB-GYN John O. Womach assumed her care while on-call over the weekend. On June 3, Womach evaluated Abella in the morning, noting that she was afebrile and doing well. He examined the abdominal incision from the C-section and did not note any problems. Womach made orders for removal of the skin clips to be replaced by steri-strips in anticipation of discharge home.

The nursing staff contacted Womach later that afternoon to confirm his orders and advise of a small amount of serosanguineous drainage from the incision, though the clips remained intact and

wound edges well-approximated. Womach reiterated that it was okay to proceed with the clip removal and placement of steri-strips.

The nurse called Womach back about 45 minutes later to advise that there was an approximate 1-inch wide opening of the outer skin layers along the incision after the clips were removed and steri-strips placed. Womach said that it was still okay to have Abella discharged home, as the steri-strips remained in place.

Subsequently, Abella went to the bathroom in her hospital room as she was getting ready to go home and noticed a strange sensation in the area of her incision. Nursing staff brought her back to her bed and determined that she had experienced a wound dehiscence of the underlying fascia, resulting in the exposure of a portion of her intestines through the incision line. Womach was contacted and returned to the hospital, where he took Abella to the operating room and performed surgical repair of the dehiscence that same evening. On June 6, Abella was discharged home with no further complications.

Abella sued Womach, Sutter Health Sacramento Sierra Region, Sutter Memorial and OB-GYN Gregory E. Douglas. Sutter Health, Sutter Memorial and Douglas were dismissed, and the case went to trial only against Womach.

Plaintiff's counsel argued that Womach breached the standard of care by inadequately evaluating Abella on the morning of June 3 and for failing to go to the hospital as a result of the first two phone calls by nursing staff regarding the noted serosanguineous drainage and opening in the outer layers of her skin.

Plaintiff's counsel argued that Womach's follow up was inadequate and that the post-operative drainage was significant enough to warrant an examination.

Womach denied any wrongdoing, asserting that he met the standard of care in all respects. Defense counsel argued that there was minimal serosanguineous drainage on June 3. Defense counsel contended that openings, such as the 1-inch-wide one on the outer skin layers, often healed on an outpatient basis.

**INJURIES/DAMAGES** *emotional distress; reconstructive surgery; wound dehiscence*

Abella alleged the need for emergency corrective surgery and emotional distress. She was seeking damages for past pain and suffering.

**RESULT** The jury found for the defense on liability.

**DEMAND** \$19,999 (CCP 998)  
**OFFER** Waiver of costs (CCP 998)

**INSURER(S)** The Doctors Company

**TRIAL DETAILS** Trial Length: 5 days  
Trial Deliberations: 1.5 hours  
Jury Vote: 9-3  
Jury Composition: 4 male, 8 female