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Plaintiffs Win Damages in Pesticide Suit

■ Dozens of Kern County residents poisoned by a soil fumigant will share \$775,000. Officials say precautions weren't taken in treating fields.

By Ann Simmons, Times Staff Writer

Attorneys, farmworker advocates and residents of one rural community are hoping that a recent settlement in a pesticide-related civil case in Kern County will send a strong message to companies that violate pesticide laws and compel them to take greater safety precautions when applying the chemicals.

Eighty-four residents near the farming town of Arvin who sued after being poisoned by a soil fumigant three years ago will share \$775,000 for their injuries in one of the largest court settlements of its kind.

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"It is significant," said Michael Freund, a Berkeley-based attorney who represented the 84 plaintiffs. "If the government is not going to do its job, it takes lawsuits to hit the companies financially and get them to hopefully improve the practices."

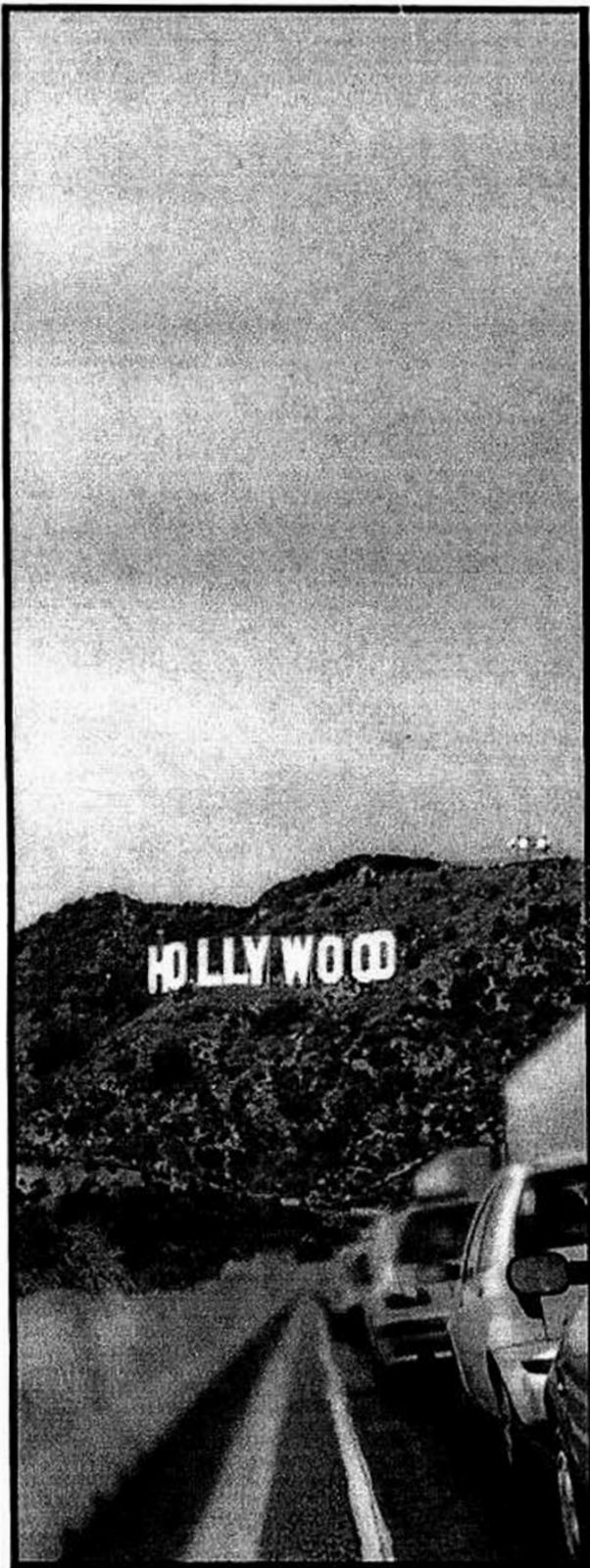
"The ball has been in the businesses' court for some time to voluntarily come into compliance and to enforce the safety of farm workers, and they haven't been doing that," said John Mitchell, deputy district attorney in Kern County, who has filed civil cases in a couple of pesticide drift incidents.

"Any time you are able to compensate victims for negligence or actions that they had no control over, I think that's a good thing," he added.

County and state investigators found that Western Farm Service, a major Fresno-based distributor of fertilizers and crop protection products in the western United States, failed to take the necessary precautions when applying metam sodium to fields near Arvin in July 2002. As a result, more than 250 people became ill from exposure to chemicals produced as the fumigant broke down.

Western Farm Service was hired by Kirschenmann Farms in 2002 to fumigate its fields near Arvin, just outside Bakersfield.

On Nov. 18, Western Farm Service agreed to pay \$500,000 and Kirschenmann Farms agreed to pay \$275,000 to the 84 victims pending finalization of the settlement agreement.



The case has not technically been closed because a judge still has to approve the settlements pertaining to 32 minors, said Michael Fox, a San Francisco-based attorney for Western Farm Service. The company declines to comment until the agreement is finalized, Fox said.

Kirschenmann Farms representatives could not be reached for comment.

Freund said the court was expected to issue its final approval Tuesday.

Kern County has been the focus of several other high-profile pesticide drift incidents in recent years, including a 2003 case in Lamont, near Bakersfield, that also involved Western Farm Service and in which more than 170 people have sued the company. The case is pending.

The Arvin settlement comes as California awaits the start of its first criminal prosecution in a pesticide-related matter in 14 years in a case stemming from a 2004 methyl bromide poisoning incident in Oakdale. Methyl bromide can cause irreversible neurological damage and death.

The California Department of Pesticide Regulation classifies metam sodium — at the center of the Arvin incident — as extremely hazardous.

Symptoms from metam sodium exposure include burning and teary eyes; skin, nose and throat irritation; and vomiting.

Plaintiff Domenica Serna said she was pleased that the case had been resolved but thought the settlement amount was unfair given what the victims had suffered and the potential for continued health complications.

"We were exposed to a lot of chemicals. It was in our homes. It was on our clothes. It was everywhere," said Serna, 26, who lives in Edmundson Acres, a residential development about a mile and a half north of Arvin, across the street from the fields that were fumigated. She said she suffered burning eyes and blurred vision and had trouble breathing.

Serna, the mother of an 8-year-old son, also expressed concern about possible negative effects to her reproductive system. She said she had miscarried two babies within the past two years. She added that she still suffers headaches, and her fiance often breaks out in a rash.

Francis Lyday, another plaintiff, said he was satisfied with the settlement, but only if it served to push violating companies to take responsibility for their actions.

"It wasn't about the money. The idea was to stop this from happening," said Lyday, a retired heavy-duty mechanic who has lived in the Arvin area for 35 years.

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Lyday said he suffered burning eyes and migraine headaches after the incident. "We don't like being poisoned."

Teresa De Anda, Central Valley representative for the statewide coalition Californians for Pesticide Reform, said she favored mandatory criminal prosecution for companies that violate pesticide application regulations.

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"If I were to take a can of Raid and spray my neighbor in the face, I would have to go to court," De Anda said. "I can't see the difference [for businesses]."

Last year the California Department of Pesticide Regulation resolved to settle with Western Farm Service in the Arvin case to save time and money. The company agreed to pay \$50,000 in civil penalties to the state and \$10,000 to the Kern County agricultural commissioner to cover the cost of its investigation.

Pesticide regulation department spokesman Glenn Brank said that in agreeing to settle, Western Farm Service did not admit any wrongdoing. But the state found that the company had committed multiple violations of pesticide law.

Critics say state and local authorities need to do more to ensure that pesticide companies abide by the law and that they are pushing for stricter and more consistent enforcement.

Freund, the lawyer, called for the buffer zone between fields and sensitive areas, such as schools and residential neighborhoods, to be expanded beyond the current recommended 500 feet.

He said companies should be compelled to give people substantial notice before any pesticide application so they could leave the area if they wished.

Brank, of the pesticide regulation department, said his agency was preparing further recommendations on buffer zones for metam sodium and other fumigants.

He noted that substantial information about safety precautions was available online in English and Spanish at <http://www.cdpr.ca.gov>.

In August, the Department of Pesticide Regulation and the statewide group of county agricultural commissioners adopted a policy aimed at strengthening and standardizing pesticide enforcement regulations statewide.

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A judge still has to determine how much of the money will go to the 32 minors in the group. Bec is not technically closed, lawyers for the farm and the pesticide applicator said they could not accept settlement.

In the small farmworker towns that dot the San Joaquin Valley, the Arvin pesticide drift case is r because Gonzalez and other residents sued and received a substantial settlement.

During 2003, the last year for which numbers are available, 175 million pounds of pesticides were California. Most applications were safe, but officials still identified 802 cases of pesticide-related half of them in agriculture.

After conducting its own investigation of the Arvin case, the Department of Pesticide Regulation Farm Service \$60,000, which will be divided between the state and the county agricultural commissioner Brank said.

After a pesticide cloud drifted over the town of Earlimart in 1999, sickening 250 people, the state Ellis, the company found liable in the case, \$150,000.

But since then, hundreds of people have been poisoned by pesticide drifts in Kern County. They occur in the same towns and involve the same companies.

Western Farm Service, one of the defendants in the 2002 Arvin case, was also involved in a drift left 150 people sick in Lamont. Wilbur-Ellis, the company connected to the Earlimart incident, was another drift case in Arvin in 2002, according to the county and state records.

The repeated incidents have led the Department of Pesticide Regulation to renew its commitment to pesticide application law, said Brank.

The state agency's new policy, adopted in August 2005, makes fees of up to \$5,000 per person mandatory in cases when drift leads to harm or property damage. The department is working to get the policy into enforceable state regulation, Brank said.

DPR also is encouraging local agricultural commissioners to take cases to court. Last year, the County Agricultural Commissioner took a pesticide poisoning case that endangered the life of a district attorney, and criminal charges were filed.

Advocates said more rigorous enforcement and bigger fines might help prevent new incidents.

"So far, fines haven't been a deterrent for someone who has a million-dollar business," said Susan senior scientist at the Pesticide Action Network. "We hope to see results soon."



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Spray victims win settlement

Arvin residents poisoned by fumigant more than three years ago will split \$775,000

By SARAH RUBY, Californian staff writer

e-mail: sruby@bakersfield.com

Posted: Friday November 18th, 2005, 11:05 PM

Last Updated: Friday November 18th, 2005, 11:26 PM

More than 80 Arvin residents poisoned by a soil fumigant on a summer evening will share \$775,000 for their injuries.

Metam-sodium wafted through a rural neighborhood and sickened 250 people more than three years ago. The fumigant was used incorrectly, according to a state investigation, and the applicator agreed to pay a \$60,000 fine.

To settle a civil case, the Fresno-based company Western Farm Service will pay another \$500,000 to the 84 victims and their lawyer. Kirschenmann Farms, which hired Western Farm Service to fumigate its field, will pay \$275,000.

Spokesmen for Western Farm Service and Kirschenmann Farms wouldn't comment Friday. The phone number for Kirschenmann Farms now reaches Sierra Farms, and both companies are headed by Kirschenmann family members.

Though it's a relief to be done with the lawsuit, some victims aren't sure they're being paid what their health is worth.

"It's not what we were waiting for," said Maria Sanchez, speaking in Spanish after a hearing Friday morning.

Sanchez and other clients would not reveal their settlement amounts. No plaintiff got less than \$2,000 after attorneys fees, according to their lawyer.

On July 8, 2002, Sanchez and her husband, Orlando Gonzalez, were hit with a foul smell while relaxing after work with their seven children and grandchildren. They ran from the front yard inside with itching eyes and burning throats, but a swamp cooler pumped the poison indoors, Sanchez said.

The victims' symptoms included burning, bloodshot eyes, vomiting, headaches and rashes.

"I used to cry from the headaches," said Janie Gonzalez, Maria's 18-year-old daughter.

The pain persisted for years, Gonzalez said, and she finally saw a doctor, who prescribed ibuprofen.

Long-term health problems are a major concern, said Domenica Serna, 26, who came home from the grocery store that night to find her father trying to wash stinging chemicals off her son, niece and nephew.

"I don't feel safe because of the fact that this happened," she said.

The case is not technically closed; it's waiting for a judge to approve settlements involving 32 minors. On Friday, Judge Arthur Wallace told the plaintiffs' Berkeley-based attorney, Michael Freund, to take no more than 25

percent of minors' settlement award. He had negotiated a 40 percent payment from all clients.

Kern is home to several high-profile pesticide exposure incidents since 2002. In October 2003, Western Farm Service was implicated in a two-day soil fumigant poisoning in Lamont. Nineteen farmworkers were sickened in Arvin in May 2004, and in May 2005, about two dozen workers in the area were taken to the hospital for pesticide exposure.

More than 170 people sued Western Farm Service over the Lamont incident, and the case is pending. The District Attorney's office brought charges against pesticide applicators involved in the two recent Arvin cases.

The agricultural commissioner is investigating a metam-sodium exposure incident that took place in Mettler in August.

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La Sierra Tract for their traditional uses, which they have been barred from for more than forty years.

Local 10, ILWU v. City of Oakland – National Lawyers Guild, San Francisco Bay Area Chapter, San Francisco, CA: \$17,500. As partial settlement of the action, Oakland agreed to a new crowd control policy which limits the use of a variety of dangerous weapons and techniques, including wooden and rubber bullets, Taser stun guns, pepper spray and motorcycles to break up crowds, and to pay \$900,000 to forty-four of the plaintiffs.

Marbet v. City of Portland – Northwest Constitutional Rights Center, Portland, OR: \$9,000. In this challenge to Portland Police use of pepper spray and rubber bullets to disperse peaceful demonstrations against President Bush, a settlement of \$300,000 plus attorney's fees/costs was achieved.

Montana Fair Housing v. Lloyd A. Twite Family Partnership – Montana Fair Housing, Missoula, MT: \$5,000. The lawsuit against the owners, developers architects and engineers of two local housing developments, alleged that persons with mobility impairments were discriminated against due to non-compliance with the Fair Housing Act Amendments. A settlement requires the Defendants to create 40 to 120 accessible units, to attend training to ensure their future compliance with the Fair Housing Act Amendments, and to pay legal expenses and damages that Montana Fair Housing incurred during the litigation.

Ngwanyia v. Ashcraft – American Immigration Law Foundation, Legal Action Center, Washington DC: \$10,000. The case was brought on behalf of asylees granted asylum in U.S. but denied permanent resident status due to failure of INS (now U.S. Citizenship & Immigration Services, Homeland Security) to properly administer their adjustment program. In the settlement agreement, the government agreed to adjust the status of an additional 31,000 asylees over the next three years and to make the process of obtaining evidence of authorization to work easier and more straightforward.

Razul II v. Bush – Justice in Exile, New Orleans, LA: \$20,000. These actions sought review of incarceration of prisoners held in Guantanamo Bay, Cuba. As of May 2005, petitions have been filed on behalf of 197 prisoners, and 350 out of 500 prisoners are being provided with legal representation.

State of Washington v. Johnny Varner – Seattle, King County Public Defender Assn., Racial Disparity Project, The Defender Association, Seattle, WA: \$15,000. This case challenges discriminatory practices and selective enforcement arrests by undercover Seattle police. A recent Court of Appeals decision is the first time an appellate court affirmed a trial court's decision to grant discovery in a selective enforcement challenge to a drug case since the U.S. Supreme Court raised the bar to getting discovery in 1996 in *U.S. v. Armstrong*.

Thank you so much

for these loans [grants].

The money made a world of difference in how aggressive we could be in our litigation against the City of Portland.

– Alan Graf, Interim Director
Northwest Constitutional Rights Center

■ **Environmental Justice**

Alvarez v. Western Farm Service & Kirschenman Farms – Law Offices of Michael Freund, Berkeley, CA: \$10,000. This action to redress massive pesticide exposure of the poor community of Arvin, CA was successfully settled on August 22, 2005. The Defendants will pay the Plaintiffs a total of \$775,000. In addition to the monetary success, the Kern County permit requirements are now more stringent and the California Department of Pesticide Regulation is currently working to strengthen its pesticide laws.

Hartford Park Tenants Association v. Rhode Island Department of Environmental Management – Rhode Island Legal Services, Inc.: \$25,000. In October of 2005, this challenge to the construction of mostly minority schools on the site of a former waste dump won a landmark trial court ruling, that found that the Rhode Island Dept. of Environmental Management violated the state's contaminated site clean up law by failing to consider issues of environmental equity for low income and racial minority populations.

John Doe v. Unocal – EarthRights International, Washington DC: \$65,000. This challenge to Unocal's complicity in human rights violations in Burma was settled in March 2005 with monetary relief to the plaintiffs and their communities. The victory gives the Burmese villagers the chance to rebuild their shattered lives, as well as implement development projects in areas such as health care and education.

Oregon Center for Environmental Rights v. Kinder Morgan Corp. – Oregon Center for



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