

FEATURED VERDICT

WHISTLEBLOWER

Retaliation

Lineman claimed he was fired after making complaints

VERDICT **\$1,094,615**

CASE Matt Niswonger v. Pacific Gas & Electric Company, No. CISCV174352

COURT Superior Court of Santa Cruz County, Santa Cruz, CA

JUDGE John Gallagher

DATE 11/27/2013

PLAINTIFF

ATTORNEY(S) Jonathan H. Siegel (lead), Siegel, LeWitter & Malkani, Oakland, CA

Benjamin J. Siegel, Siegel, LeWitter & Malkani, Oakland, CA

DEFENSE

ATTORNEY(S) Susan T. Kumagai, Lafayette & Kumagai LLP, San Francisco, CA

Gary T. Lafayette, Lafayette & Kumagai LLP, San Francisco, CA

FACTS & ALLEGATIONS In September 2011, plaintiff Matt Niswonger, a lineman in his 40s, was terminated from his position at Pacific Gas & Electric Co.'s Santa Cruz yard facility.

Prior to his termination, Niswonger and other linemen were asked to replace a broken electrical pole on Hihn Road in Ben Lomond. His supervisor said the repair could be done without shutting down power. They were ultimately able to complete the work, but an incident occurred that caused live, high-voltage wires to come close to touching during the course of their work. As a result, Niswonger complained to his union safety representative and supervisors about having to repair electric lines without shutting down power, claiming it was dangerous. In addition, he allegedly suffered from panic attacks, anxiety and depression, and took a month-long medical absence. When his supervisor called to ask him to return to work to talk about the absence,

Niswonger responded that he would not. Niswonger and his supervisor then exchanged voicemails about the absence throughout the week until the supervisor ultimately fired him in a voicemail.

Niswonger sued PG&E, alleging the defendant's actions constituted wrongful termination in violation of public policy under California Labor Code § 6310, which prohibits firing someone in retaliation for complaining to their employer or representative about unsafe working processes or conditions.

Plaintiff's counsel contended that less than one year after the San Bruno pipe explosion, Niswonger complained to his union safety representative and supervisors that being sent to repair electric lines without shutting down power to the lines in Ben Lomand was dangerous to the PG&E workers, as well as the neighborhood. Counsel contended that after Niswonger made the complaints, PG&E engaged in a course of retaliation, including pre-textual write-ups and discipline, which all eventually resulted in Niswonger's termination. Thus, plaintiff's counsel argued that Niswonger was terminated in retaliation for making safety complaints about the company.

PG&E claimed that Niswonger was terminated for legitimate business reasons. Defense counsel mainly argued that Niswonger hadn't made a protected safety complaint and even if he had, it wasn't why Niswonger was fired.

INJURIES/DAMAGES *emotional distress*

Niswonger, a father of three, worked for PG&E from 2003 until his termination in September 2011. He sought recovery of damages for his emotional distress and lost wages and benefits.

RESULT The jury returned a unanimous verdict for Niswonger and awarded him \$1,094,615.

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NISWONGER	\$594,615 past and future lost wages/benefits <u>\$500,000 emotional distress damages</u> \$1,094,615
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DEMAND	None reported
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OFFER	\$250,000 (C.C.P. § 998)
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TRIAL DETAILS	Jury Vote: 12-0 on liability and economic damages; 10-2 on emotional distress
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POST-TRIAL Defense counsel's motion for a new trial and judgment notwithstanding the verdict was denied.

EDITOR'S NOTE This report is based on information that was gleaned from an article that was published by the Santa Cruz Sentinel and an interview of plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.