

## Changing Demographics Drive Jury Verdicts and Impact Claims Analysis In California's Central Valley

A jury awards \$11.5 million to the plaintiff in a personal injury lawsuit following a freeway accident. Just months prior, another jury in the same venue returns a \$7.3 million verdict to the family of a bus driver killed while refueling on the side of the road. California has long been known for large jury verdicts. But these recent trial results are not from Los Angeles or San Francisco. Both are from the Fresno County Superior Court, located in the center of California's agricultural heartland, long believed to be a conservative bastion where plaintiffs had difficulty convincing juries to return large verdicts.

That perception began to change in late 2007 when a Fresno County jury returned a \$19.1 million verdict in favor of a former Fresno State University women's basketball coach who sued the university for gender discrimination. That verdict came shortly after another coach obtained a \$5.85 million award from the university after claiming that she had been retaliated against for speaking out about gender discrimination on campus. These verdicts were the largest ever returned against the California State University system for claims of this type.

These large jury verdicts are, at least in part, the result of changing demographics in the Central Valley. Understanding these changes and the impact they have on the composition of local juries is important both to those arguing cases in this geographic area and to risk management professionals assessing the potential value of these claims.

### **Not As Small As You Think.**

The area known as the Central San Joaquin Valley can be defined in various ways. It stretches from Bakersfield in the South to at least Stockton in the North. At its center is the City of Fresno, long known for its raisins and being the punch line of jokes by late night comedians. But one aspect of Fresno in which perception may not match reality is population. Fresno is the 34<sup>th</sup> largest city in the United States, according to U.S. Census data. By population, Fresno is bigger than Atlanta, Miami, Minneapolis or Cleveland. A substantial portion of the City's population growth has occurred in the last two decades. In 1990, Fresno was only the 48<sup>th</sup> largest city in the country.

The influx of newcomers to the area means that long held perceptions about Fresno are likely to be outdated. While the County of Fresno still leads the nation in agricultural production by dollar value, the City of Fresno is an urban area with both the diversity of population and crime, pollution and other problems that plague large cities.

Agriculture as an industry features low paying jobs in tough condi-



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tions. Farmers are inherently conservative. These factors always made plaintiff's attorneys think twice before asking a local jury to return a large verdict. But a local jury in the Central Valley these days will be composed of more transplants than ever before. Local residents in Fresno County are more likely to have grown up in an urban environment than a farm. Verdicts, particularly in Fresno County, will increasingly become like those in other large cities in California. It's not a small town anymore.

### **A Hispanic Majority**

Another change in recent years in the Central Valley is the ever increasing Hispanic population. While this demographic change has been noted on both a State and Nation wide basis, it is particularly pronounced in the Central San Joaquin Valley. According to the most recent data from the United States Census Bureau, 16.9 percent of the population of the United States is Hispanic. In California as a whole, that percentage is much higher, at 38.2%. But in the Central Valley, particularly in the southern end, the Hispanic minority has become a majority.

In Kern County, Hispanics make up 50.3 percent of the population. In Fresno County, the percentage is 51.2 percent. South of Fresno, in Tulare County, the percentage is all the way up to 61.8%. Even in the more northern counties, where Hispanics are still a "minority," the percentages are still higher than the Statewide numbers: San Joaquin County – 39.7% and Stanislaus County – 43%.

Census data includes individuals who are too young for jury duty or who are otherwise unqualified to serve as jurors based on citizenship and other criteria. But it's clear that future juries in the Central Valley will be made up of larger and larger percentages of Hispanic citizens. While it would be a mistake, one that many politicians often make, to view the Hispanic population as monolithic, it's an equally big mistake not to consider the sensitivities of this population in trying cases and evaluating claims.

These are not just theoretical considerations. Under California law, a plaintiff in a personal injury case who is an undocumented worker can be limited in recovering damages for future loss of income to the amount he or she would have earned in their country of origin. *Rodriguez v. Kline* (1986) 186 Cal.App.3d 1145. But making that argument and introducing evidence on this issue at trial may risk alienating a significant percentage of a jury. The same is true in any case in which a defendant tries to minimize the lost income claims brought by a hardworking immigrant. The jury, more so than counsel or a claims professional, may understand why such an individual's past income is not adequately documented or why he or she expects to make more in the future. Counsel and claims professionals clearly need to understand that perspective as well.

### **From North To South**

In analyzing potential jury pools, party registration can be a key statistic. All registered voters are generally qualified to serve as jurors, so the numbers directly reflect the makeup of the population who can sit in a jury box. Party registration also gives at least some insight into an individual's views, as opposed to simply reflecting their background.

In California as a whole, the decline of the Republican Party has been well documented. According to the California Secretary of State, as of November 2012, the Democratic Party had a significant statewide lead in registered voters, 43.6% to 29.3%. That pattern is followed in the north end of the Central San Joaquin Valley. For instance, Democrats lead Republicans in San Joaquin County - 43.5% to 36.5% - and in Stanislaus County – 40.0% to 38.9%. But that pattern is reversed at the South end of the Valley. In Kern County, Republicans have a 41.3% to 35.7% registration advantage. The Republican lead in Kings County, also located south of Fresno, is more striking: 45.7% to 35.8% in favor of the GOP.

Given the Statewide party registration statistics, the Republican voter registration numbers for the south

end of the Valley demonstrate just how conservative these areas are. The dividing line is likely in Fresno, where the numbers are 40.1% Democrat, 38.5% Republican. In assessing the political outlook of the potential jury pool, current registrations show a definite North/South split and suggest that a case venued in the south end of the Valley is likely to be heard by a more politically conservative jury.

### **Some Things Stay The Same**

While the population of the Central Valley may have grown and become more diverse, some demographics have unfortunately stayed the same. Residents of the Central Valley are both poorer and less educated than the rest of the State. U.S. Census data shows that in California as a whole, 30.2% of the population holds a bachelors degree. In comparison, the percentages for Fresno, Tulare and Stanislaus Counties, respectively: 19.5%, 12.9 % and 16.4%.

The numbers for income are similar. Statewide per capita annual income is \$29,634. For Fresno, Tulare and Stanislaus Counties: \$20,638, \$17,986 and \$21,820.

### **What The Numbers Mean**

The Central Valley remains poorer and less educated than California as a whole. At least in the south part of the Valley, it is politically more conservative. The entire Valley is moving towards a Hispanic majority and jury pools will follow. While agriculture is the number one industry, Fresno is a large city, far more urban than rural.

The common wisdom in decades past was that juries in this area simply would not return large verdicts and that the population as a whole was more sympathetic to defense interests than in other parts of the State. A string of large verdicts in Fresno, a number of which are in excess of \$10 million, shows that the common wisdom is wrong. The changes in demographics which have caused this shift are likely to impact outlying Counties as well. Anyone with interests in this area should contemplate the impact of the new Hispanic majority, a change that appears irreversible. Every case is different and ultimately has to be analyzed on its own facts. But the risks presented by cases filed in this geographic area have become higher and the analysis of those risks has become more complex.

### **WSHB – Fresno**

Since opening our Fresno office eight years ago, we have successfully tried cases up and down the Valley, including occupational exposure, commercial and personal injury claims. We most recently obtained a 12-0 defense verdict in a case brought under the Federal Employer's Liability Act in Stanislaus County. We combine State and Region wide experience with local insight to obtain the best results for our clients. If you have a legal matter pending in the Central Valley, we would be happy to discuss it with you.