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'Demonstrable Effect' on Parents

\$2M Settlement in Teen-ager's Death

By Gary Taylor
Special to the National Law Journal

HOUSTON — A \$2 million settlement won by the parents of the victim in a wrongful-death suit here has forged new ground for cases in which the deceased has no surviving spouse or children.

The settlement is believed to be the largest ever for parents of an industrial-accident casualty. *Shaffer v. Advanced Aromatics Inc.* 84-58473 (333d Dist. Ct., Harris Co.).

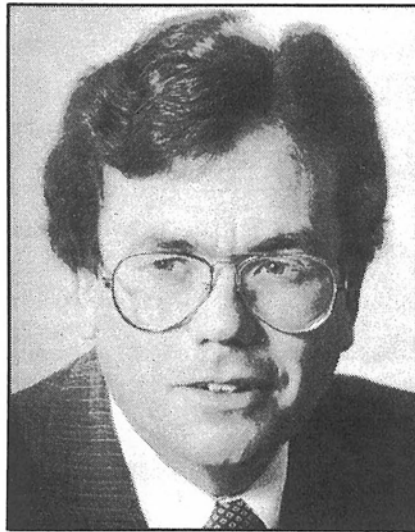
"The impact of the death on the family unit was demonstrable," explained the family's attorney, Richard Warren Mithoff of Houston's Law Offices of Richard Warren Mithoff, P.C.

It has only been since 1983 that Texas courts have been able to consider parental awards above \$20,000, according to Mr. Mithoff. The courts first held that parents can recover for loss of companionship, and the following year, parents were allowed to recover exemplary damages, *Sanchez v. Schindler*, 651 S.W.2d 249 (1983); *Hofer v. Lavender*, 679 S.W.2d 470 (1984).

"Even with those cases," said Mr. Mithoff, "settlements have ranged in the \$250,000 to \$500,000 amount until now."

Sprayed With Toxin

The current case arose from the Aug. 17, 1984 death of Peter Edward Shaffer, a 19-year-old sophomore at Sam Houston State University. While working on a summer job for a subcontractor at the Baytown, Texas petrochemical company, he was accidentally sprayed with phenol.



OBVIOUS IMPACT: Attorney Richard Warren Mithoff said the 'Impact of the death on the family was demonstrable.'

Rescue workers washed most of the chemical from the young man's body, but the substance is so toxic that he suffered convulsions and died a few hours later.

Seeking \$2.5 million in damages, the family charged that the company failed to take reasonable precautions against accidental release of phenol. They also charged that the company failed to post proper warnings about the substance's dangers and that it failed to instruct employees about how they should act in the event of an accident.

Attorneys for the company have refused to comment on the case.

Mr. Mithoff said, "The company officially maintained they were not to blame. There was no confession, but I think the size of the settlement speaks

more loudly than their words."

'Devastating Effect'

Under traditional Texas procedures, damages in such cases were limited to the amount of financial loss or the victim's actual monetary contribution to the family.

"It was usually terribly insignificant," said Mr. Mithoff. "and there have been some very callous rulings where higher courts have reduced awards by stating that the child's death was actually a benefit for the parents instead of a loss."

Armed with the 1983 and 1984 Texas Supreme Court rulings and "parents who were special people," Mr. Mithoff requested more than usual amount. He said videotapes of pretrial interviews with the parents made a "significant impression. It was obvious the jury would realize the devastating effect on the family unit."

Under terms of the settlement, the family will receive \$1.25 million immediately with an additional \$750,000 invested in an annuity for a payout during the next 10 years.

They plan to set aside some of the money for the education of their remaining child, the victim's 16-year-old brother. And they want to use a portion of the settlement to create some kind of industrial-accident program.

"They are consulting with trust officers to see what they can do," said Mr. Mithoff. "They want to establish a scholarship fund to help educate safety prevention experts. The specifics aren't definite. But some of the money will be used in that way."