

## TOP VERDICTS

THE LARGEST AND MOST SIGNIFICANT VERDICTS  
AND APPELLATE REVERSALS IN CALIFORNIA IN 2023

### Murphy v. The Regents of the University of California

To a large extent, the litigation battle between pediatric radiation oncologist and researcher Kevin Murphy and U.C. San Diego, where he once worked, turned on a fabricated inventory list of equipment.

For some years, Murphy had been researching a depression treatment called personal repetitive transcranial magnetic stimulation, or PrTMS, that uses magnetic pulses to affect brain cells. He was investigating it to treat other neurological problems, including pain and autism. He was so successful with one elderly patient that the man promised to leave the university \$10 million to fund Murphy's research.

But after the man died, Murphy discovered that higher-ups at the university had put the money toward other research, according to Mark Quigley, his lead trial attorney. He complained and, after a yearlong investigation, what was left of the funds was redirected to his work.

That so angered his superiors that in early 2018, they basically forced him to move his research off cam-

pus, Quigley said. A couple of months later, the university received an anonymous tip that he was somehow redirecting or stealing very expensive equipment that was supposed to be at his research site. An audit turned up an inventory attached to his lease agreement that listed machines that were not at his location, and the university allowed Murphy's contract to lapse.

So Murphy filed a complaint that he was being retaliated against for having blown the whistle on the misdirected research funds, and the university hired Boise Schiller Flexner to investigate him.

Each side sued the other, and the cases were consolidated for trial last summer. *Murphy v. The Regents of the University of California*, 37-2020-00032541 (S.D. Super. Ct., filed Sept. 9, 2020).

One problem with the inventory list was that it was dated in April 2018, while the lease it was stapled to was dated in March, Quigley said. During the litigation, two other copies of the inventory showed up, but with the final three pages missing from both.



MARK T. QUIGLEY

During the trial, Quigley cross-examined the assistant who prepared the inventory that was provided to the university. Under questioning, she was "all over the place," he said, until she finally admitted the list was a fake. At that point, the jurors were "just shaking their heads," he said.

After an eight-week trial, the jury awarded Murphy about \$9.6 million in economic damages and \$30 million in noneconomic damages.



IVAN PUCHALT

It also awarded the university \$67,000 against Murphy related to outside income.

Quigley said the University of California, as an important part of state government, encourages people to blow the whistle on wrongdoing and promises to protect those who do. But this case shows that isn't true, he said. "They go after whistleblowers," he said. When people do uncover problems, "they whitewash it every time and blame the whistleblower."

His co-counsel Ivan Puchalt added, "We are hopeful that this verdict will serve as a reminder that all UC employees must be allowed to report any wrongdoing without fear of retaliation."

The attorneys for the university did not reply to a request to discuss the verdict.

— DON DEBENEDICTIS

#### CASE DETAILS

##### CASE NAME

Murphy v. The Regents of the University of California

##### TYPE OF CASE

Whistleblower retaliation

##### COURT

San Diego Superior Court

##### JUDGE(S)

Judge James A. Mangione

##### PLAINTIFFS' LAWYERS

Greene Broillet & Wheeler LLP, Mark T. Quigley, Ivan Puchalt

##### DEFENSE LAWYERS

Duane Morris LLP, Robert D. Eassa, Michael L. Fox, Marc A. Koonin