

EXTRA

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COVER STORY

Taste of Success

At \$100 million, the average award for 2004's **Top 10 Plaintiff's Verdicts** hit its lowest point since 2000. But plaintiffs' lawyers need not fret: There's still plenty of work to do, esp. when it comes to corporate scandals and patent battles, which spawned six of last year's largest awards

Gone are the days of Big Tobacco and billion-dollar verdicts. Instead, 2004 saw tort reform take center stage as President Bush leveraged the issue to sweep back into office. Can you say red?

Adding to the diminished picture for plaintiffs' lawyers was the ripple effect of *State Farm v. Campbell* on punitive damages.

As a result, 2004's Top 10 Plaintiff's Verdicts have the lowest average award, \$100 million, since 2000's low-water mark of \$60 million.

The upside for plaintiffs' attorneys seems to lie in corporate scandal and intellectual property battles; six of the top 10 fall into that category.

Dennis Schoville of San Diego's Schoville & Arnell took advantage of the post-Enron and World Com environments to secure a victory against Ford - the first after 13 straight courtroom victories by the

automaker. Schoville convinced a jury that the instability of the Ford Explorer caused the sport utility vehicle to roll over, leaving the driver paralyzed.

Schoville won the year's biggest verdict: \$368.8 million verdict for Benetta Buell-Wilson.

Greene, Broillet, Panish & Wheeler's Brian Panish and Christine Spagnoli encountered a company that tried to blame their client's smoking for the burns he suffered on 75 percent of his body after his construction vehicle caught fire. But Panish and Spagnoli were able to prove that a defective part in the vehicle actually caused the fire, engulfing Joseph B. Grigg's with flames and causing third-degree burns. The pair netted a \$58 million verdict, sixth on this year's list.

Last year also saw more plaintiffs hitting the big time in patent disputes. And, the man to go to last year was Joseph Re of Irvine's Knobbe, Martens, Olson & Bear (joining the nearly ever present Morgan

Chu of Irell & Manella).

Re posted the No. 2 and No. 9 verdicts on the 2004 list, with wins of \$134 million and \$43.5 million respectively.

"I'll try to do better next year," Re says of his two large victories.

Chu took on Sony for Immersion and won a \$106 million verdict after a jury found that Sony's video game division infringed Immersion's patent on joysticks that simulate real-life tactical sensations.

And then there are the cases on which perhaps even Martha Stewart and Karl Rove could, basically, agree: the daughter killed by an underage driver because she had to walk to school on a street with no sidewalks, the elderly man whose bank made itself welcome to his Social Security check and the 100 passengers killed in an airplane crash because of a faulty part.

They make everyone blue.

— **Stefanie Knapp**

[7] *DirectTV Inc. v. Pegasus Satellite Television Inc.*- \$51.5 million

Rarely is courtroom action quite like the drama that unfolds on the big screen, but when Kirkland & Ellis attorney Melissa Ingalls took on a witness in the heated *DirectTV v. Pegasus* trial, the only thing missing was the cameras.

The testimony given by Pegasus Chief Financial Officer Joseph Pooler to show his company did not owe DirecTV back fees from a joint-marketing agreement involved topics and exhibits never before disclosed to the plaintiffs, Ingalls' co-counsel, Mike Baumann, says.

Ingalls worked through the night in order to show the jury that the testimony and new exhibits claiming DirecTV was overcharging Pegasus were inaccurate.

"In each instance, Ms. Ingalls was able to walk the jury through a series of documents demonstrating that Pooler was flat wrong," Baumann says. "Pooler became increasingly agitated and defensive, even to the point of being uncertain whether he could sip from a cup of water without Ms. Ingalls' permission.

"The last question ended the cross-examination, and Pooler was excused, literally rushing from the courtroom and banging the gate into the well in his haste to get out of the courtroom."

The Los Angeles federal jury ordered Pegasus to pay \$51.5 million to DirecTV, the seventh-largest verdict of the year. U.S. District Judge Lourdes G. Baird tacked on prejudgment interest a short time later, bringing the total award to \$63.5 million. *DirectTV Inc. v. Pegasus Satellite Television Inc.*, CV01-6220 (C.D. Cal. April 14, 2004).

The dispute stemmed from an agreement between DirecTV and Pegasus, which at the time was the nation's largest independent distributor of DirecTV programming, mainly to households in rural areas. As part of their respective businesses, the companies paid commissions to various retail stores, which for DirecTV included



Kirkland & Ellis' Mike Baumann, left, says that the cross-examination by his co-counsel Melissa Ingalls of Pegasus Chief Financial Officer Joseph Pooler was quite entertaining. "The jury loved the examination, at times laughing at the witness and at others, simply staring with incredulity," Baumann says.

Best Buy and Circuit City, which in turn sold the equipment necessary to receive DirecTV programming.

But customers would often purchase the receiver from a retailer to which DirecTV paid a commission, but then activate it in Pegasus' territory, and vice versa. That meant the company that commissioned the store for the receiver wasn't making back its money in subscriber revenues.

"This problem was happening a lot, so the companies entered into a seamless marketing agreement that basically said one would pay the other a stated fee if they had paid a commission to the retailer but did not receive the activated programming subscriber," Ingalls says.

But DirecTV was never properly reimbursed and successfully sued Pegasus for violating the contract.

Baumann said Ingalls' cross-examination began with small issues on which Pooler had been deposed and which helped undercut his claim of extensive knowledge

on the subjects he testified about. Ingalls used Pegasus' own demonstrations to walk the jury through the new claims made by Pegasus that DirecTV was overcharging by including certain retailers that were not covered by the parties' contract.

"The jury loved the examination, at times laughing at the witness and at others, simply staring with incredulity," Baumann says.

Peter Ostroff of Sidley Austin Brown & Wood, the lead attorney on the team

"Mr. Baumann and I must have been watching different cross-examinations," Ostroff says.

Pegasus filed for bankruptcy a short time after the jury's verdict, paving the way for the sale of Pegasus' satellite television assets to DirecTV for \$938 million.

"I am gratified that the parties were able to resolve matters in a mutually agreeable fashion," Ostroff says.

— Geneva Whitmarsh