

10 TOP 10

JURY VERDICTS 2009

Top Ten rises again

After years of decline, the Top Ten Jury Verdicts rose dramatically in 2008.

The increase in 2009 was less pronounced, but the average increased again, from \$112 million to nearly \$145 million.

The top award was slightly lower in 2009 – \$370 million versus \$388 million. But two other awards in the \$300 million range, along with five verdicts of \$70 million or more, helped push the average appreciably higher than last year.

The year's top verdict went to five former employees of Guess Jeans mogul Georges Marciano, who claimed that Marciano falsely accused them of stealing from him and used his wealth and connections to dog them with investigations, tax audits and accusations in newspaper ads and on Internet sites. And seven of the Top Ten Verdicts stemmed from per-

sonal injury cases, including two drunk driving accidents, one \$300 million tobacco verdict, and one verdict in the ongoing Prempro litigation against Wyeth Pharmaceuticals.

Lawyers USA compiles the Top Ten Jury Verdicts each year, applying certain ground rules. First, verdicts must be to an individual plaintiff, defined as a single person, family or small group of individuals injured in a single incident who had their claims tried in one case before the same jury.

Second, we do not include business-against-business suits, class actions or consolidated cases. Finally, cases must have been defended – default verdicts and suits against incarcerated individuals are not included.

– Susan A. Bocamazo

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TOP (7) TEN

JURY VERDICTS OF 2009

\$71 MILLION

Ousted water company partner wins \$71 M

By Correy E. Stephenson
Staff writer

Alleging conversion and breach of fiduciary duty, one partner in a three-man water drilling company won \$71 million against his partners after they tried to shut him out of the business.

Dean Davenport formed a water drilling company with James Allen and Mark Wynne in 1999. The company's success drove the other two partners to try to push Davenport out, explained Tom Hall, who represented the plaintiff.

Using a novel theory of conversion – that the other two partners exercised dominion and control over Davenport's share of the company to his detriment – Hall asked jurors for between \$70 and \$100 million, or one-third of the value of company.

"The evidence showed that this company had a value in excess of \$200 million," said Hall, a partner at Hall and Bates in San Antonio.

After two weeks of trial, a 12-person jury awarded Davenport \$71 million – \$70 million in actual damages and \$1 million in punitive.

"The hardest part of a case like this in today's climate is trying to get a jury thinking about awarding something like \$70 million," Hall said. "With damages that large, I was afraid the jury wouldn't take us seriously."

Glenn Deadman, a sole practitioner in San Antonio who represented the defendants, refused to comment on the case. Although one of the defendants settled after trial, the other is appealing the verdict, and

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— Tom Hall

"It is my custom and practice not to make any comment while a matter is still subject to litigation," Deadman said.

Water, water everywhere

The Water Exploration Co. was founded by the three partners in 1999. Relying on Davenport's knowledge of an untapped aquifer, the company quickly became successful, pulling in 7 figures a year, Hall said.

"Most of the water in south Texas comes from aquifers, as opposed to surface water, and Mr. Davenport knew from prior drilling experience of an underutilized and underappreciated aquifer that produces very large quantities of water," Hall said.

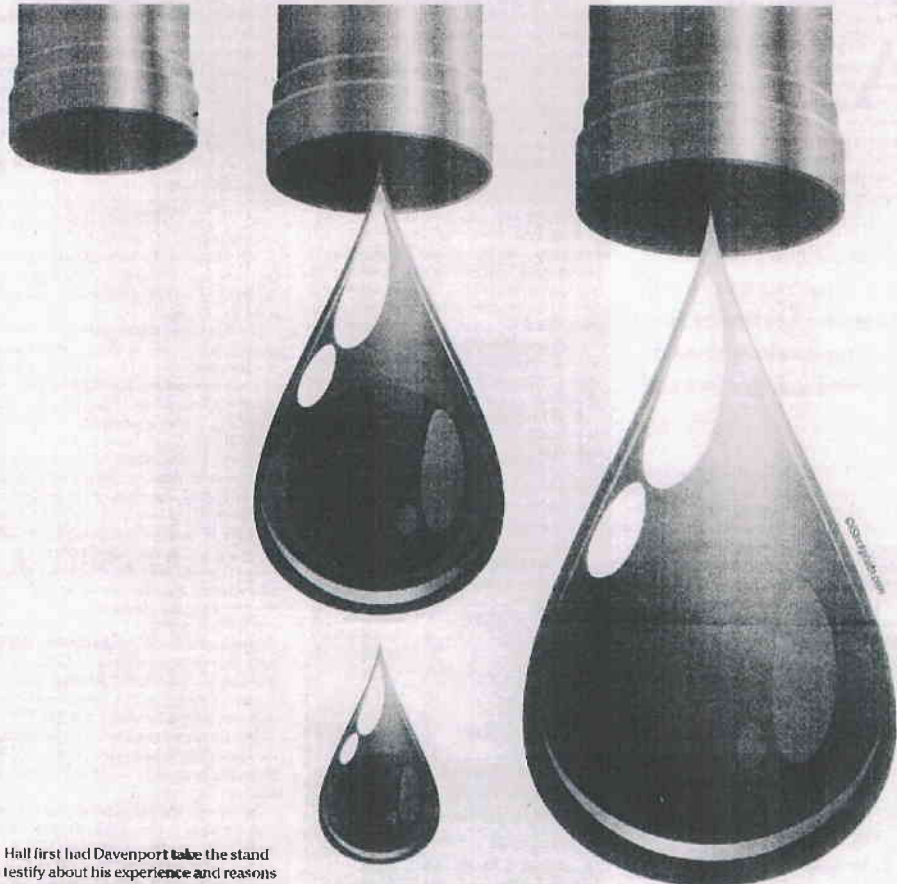
The company drilled 47 successful, producing wells, which won it a very valuable contract to supply public water for Bexar County (where San Antonio is located).

With the money pouring in, the other two partners wanted a 50/50 split instead of a one-third share, Hall said. They began cutting Davenport off from the business by refusing to let him see the books, threatening to sue him and his family members and telling him he'd never see a penny from the business.

"These guys really had their foot on his throat for years," Hall said.

Davenport filed suit in 2006.

The trial lasted 14 days, five of which were spent on the plaintiff's presentation.



Hall first had Davenport take the stand to testify about his experience and reasons for filing his lawsuit. He then called the defendants as his second and third witnesses. Hall said they claimed that Davenport had misrepresented to them the completion dates on the wells, and that the plaintiff had shoddy drilling practices.

"These guys don't have the highest regard for honesty and truth," Hall said. After the trial Hall spoke with the jurors, who said they didn't like the defendants and believed they were lying, while they found Davenport to be an "honest, forthright individual."

Hall also put several experts on the stand. A geologist knowledgeable about aquifers testified, while an economist talked to jurors about the value of the company. Hall also subpoenaed a finance expert the defendants had hired for use in another lawsuit, who told the jury about the value of the wells.

After seven hours of deliberations, the jury found that Allen and Wynne had acted with malice and conspired to deprive Davenport of his share in the company, awarding \$70 million in compensatory damages.

While jurors did find that the defendants had breached their fiduciary duty, they didn't award any damages on that count.

Punitive and a settlement

After the jury returned its \$70 million compensatory verdict, the parties had the opportunity to put on additional evidence before jurors deliberated on punitive damages.

Hall waived the opportunity, while the defendants put themselves back on the stand and basically testified they didn't have the money to pay the verdict, he said.

"I think the behavior of the defendants inflamed the jury in the first part of the case, [but] they spent their anger on the \$70 million," Hall said, and decided not to award a large punitive award.

The company itself is still in existence and doing business, although a receiver has been appointed to run the operation, Hall said.

After the trial, one of the defendants – James Allen – settled with Davenport. As part of the agreement, Davenport took over his interest in the company, so he now has a two-thirds share. The third partner, Mark Wynne, is appealing the verdict.

While Hall acknowledged that a large verdict is a "cause of concern" in an appeal to the conservative appellate court in Texas, he said the case "is in very good shape."

AT-A-GLANCE

Verdict: \$71 million total; \$70 million in compensatory damages, \$1 million in punitive

State: Texas

Type of case: conversion and breach of fiduciary duty

Status: One defendant (James Allen) has settled; the other (Mark Wynne) filed an appeal in December.

Case name: Davenport v. Allen

Date: Jan. 22, 2009 (compensatory); Jan. 23, 2009 (punitive)

Plaintiff's attorneys: Tom Hall of Hall & Bates in San Antonio, Texas; F. Blake Dietzmann, sole practitioner in San Antonio; Timothy Patton, sole practitioner in San Antonio

Defense attorney: Glenn Deadman, sole practitioner in San Antonio, Texas

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Jury awards \$70 million in water company dispute

BY JERRY NEEDHAM
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A Bexar County jury Thursday awarded \$70 million in damages to one of the three partners in Water Exploration Co., finding that the other two partners conspired and acted with malice to deprive him of his share of the company.

WECO has lucrative contracts to supply the Bexar Metropolitan Water District with Trinity Aquifer water from eight of the 47 wells the company developed on leased land across North Bexar County. It has been negotiating with BexarMet to provide water from more of the wells.

The jury in 45th District Judge Barbara Nellermoe's court found that developers James Allen and Mark Wynne

unfairly tried to push local water well driller Dean Davenport out of the partnership formed in 1999. The jury returns today to hear testimony and deliberate on punitive damages.

Allen and Wynne countersued Davenport shortly after he filed suit in 2006, and the suits were consolidated. The jury also found that Davenport breached a separate drilling agreement with WECO and awarded damages of \$600,000 to Allen and Wynne.

The jury deliberated for a day and a half following nine days of testimony about the complicated arrangement of partnerships and corporations each of them set up to manage, operate and own WECO.

Tom Hall, attorney for Davenport, said he believes the jury based the \$70 million award on testimony that the water leases

owned by the company are "worth something in excess of \$200 million."

"He feels vindicated," Hall said of Davenport, who he said had the idea of developing the wells on speculation.

Asked whether Davenport would look to collect his award or try to settle up and make the partnership work, Hall said, "He is assessing his options at this point in time."

Glenn Deadman, primary attorney for Allen and Wynne, declined comment, and Allen and Wynne could not be reached.

Pleadings in the case detail an acrimonious relationship between the partners in recent years. Davenport alleged that the two partners voted themselves hefty salaries but left him out and refused him access to company documents.