

**Personal Injury & Insurance Defense
Top 10 Texas Plaintiffs Verdicts in 2001**

By Margaret Cronin Fisk
American Lawyer Media

BREACH OF CONTRACT/TORTIOUS INTERFERENCE

COC Services Ltd. v. CompUSA Inc., et al.

116th District Court, Dallas County/Judge Carlos Lopez

Attorneys for the plaintiff: S. Werbner of Dallas' Sayles, Lidji & Werbner; Scott A. Scher of Dallas' Brown McCarroll; and J. David Brown of Dallas' Winstead Sechrest & Minick

Attorneys for the defense: Mark T. Josephs and Alan N. Greenspan of Dallas' Jackson Walker; Edward B. Mishkin and Deborah M. Buell of New York's Cleary, Gottlieb, Steen & Hamilton; and Theodore W. Daniel, John A. Gilliam and V. Elizabeth Kellow of Dallas' Jenkins & Gilchrist

Verdict: In 1997, the chief executive officer of COC Services Ltd., Lawrence McBride, and the president of CompUSA Inc., James Halpin, began talking about a deal whereby COC would acquire the exclusive franchise rights for CompUSA in Mexico. In January 1999, both parties signed a letter of intent, titled a "master franchise agreement," which gave COC the franchise rights and the ability to bring in a partner, with the proviso that COC maintain at least 20 percent of the resulting partnership. COC approached Carlos Slim Helu, considered to be the richest man in Latin America, to be a partner. After he got the financial information about CompUSA, Slim bought CompUSA. The plaintiffs alleged CompUSA, Halpin and Slim cut COC out of the deal. COC sued Slim, his companies, Grupo Carso and Grupo Sanborns, along with Halpin and CompUSA, alleging breach of contract, tortious interference with contract and tortious interference with prospective contract. On Feb. 8, 2001, a Dallas jury awarded COC \$454.5 million, including \$364.5 million in punitives. The punitive judgments included \$175.5 million against Halpin, \$67.5 million against Slim and \$94.5 million against Comp USA. In May, the trial court reversed all judgments against Halpin and CompUSA by law, while upholding the verdict against Slim and his companies. This left the judgment at \$121 million. The plaintiffs are appealing the reversal of the CompUSA and Halpin judgments; Slim is appealing the rest of the jury's decision.

NURSING HOME MALPRACTICE/GROSS NEGLIGENCE/FRAUD

Fuqua v. Horizon/CMS Healthcare Corp. fka Horizon Healthcare Corp.

U.S. District Court Northern District, Fort Worth/Judge Terry Means

Attorneys for the plaintiffs: H. Dustin Fillmore III, T. Andrew Beach and Charles W. Fillmore of Fillmore Law Firm, Fort Worth

Attorneys for the defense: Cynthia Shea Goosen, R. Brent Cooper and Diana L. Faust of Dallas' Cooper & Scully

Verdict: The suit was filed after the death of Wyvonne Fuqua in 1997. Fuqua had been admitted to the Heritage Western Hills Nursing Home in Fort Worth in November 1994 after a stroke. She also had anemia, dementia and recurrent urinary tract infections. As a result of her physical problems, the nursing home staff was required to turn and reposition her in bed to prevent pressure sores, or bed sores. In late 1996, Fuqua began developing severe pressure sores. In April 1997, Fuqua was discharged to a hospital emergency room. Two months after leaving the nursing home, Fuqua died.

Her son, Cecil Fuqua, sued Heritage's owner Horizon Healthcare Corp., now known as Horizon/CMS Healthcare Corp., alleging negligence, gross negligence, malice, fraud and felony violations of the Texas penal code that prohibits injuries to the elderly. On Feb. 9, 2001, a Fort Worth jury awarded the plaintiff \$312.71 million, including \$310 million in punitives. There was no cap on these punitives because of a finding of a violation of the Texas penal code. The defense filed post-trial motions to set aside the verdict, but these never were decided. Instead, the case settled in June for \$20 million in cash.

ASBESTOS PERSONAL INJURY

Bell, et al. v. Dresser Industries Inc., et al.

128th District Court, Orange County/Judge Patrick A. Clark

Attorneys for the plaintiff: Glenn W. Morgan, John Werner and David W. Ferrell of Reaud, Morgan & Quinn, Beaumont; and Karl E. Novak of Ness Motley Loadholt Richardson & Poole, Charleston, S.C.

Attorneys for the defense: Donald E. Godwin and George R. Carlton Jr. of Dallas' Godwin Gruber; and D. Ferguson McNiel III and Joseph S. Cohen of Houston's Vinson & Elkins

Verdict: The plaintiffs in this case - Oscar Bell Jr., Samuel Freeman, William Benford, Harris Johnson and Elbert Harris - had worked in Birmingham, Ala., at U.S. Pipe Co. as laborers or millwrights from the early 1960s to the mid-1970s. During this time, they allegedly were exposed to asbestos used in steel production. Bell and Freeman developed lung cancer, Harris and Johnson were diagnosed with colon cancer, and Benford has asbestosis. Freeman died in 1991 at the age of 48; Harris was 76 at his death in 1993. The plaintiffs sued Dresser Industries Inc., former owner of Harbison & Walker Refractories Co., maker of ChromePak 6, and North American Refractories Co., which makes NarcoGun and NarcoCrete, contending that these refractory products caused their illnesses. The defendants contended that the plaintiffs did not come in contact with their products and disputed the medical claims. But on Sept. 12, an Orange County jury awarded the plaintiffs \$130 million, including \$100 million in punitives. The defendants are appealing.

BREACH OF GUARANTEE AGREEMENT, FRAUD, FRAUDULENT TRANSFER

Cristina Brittingham Sada De Ayala v. Brittingham, et al.

341st District Court, Webb County/Judge Elma T. Salinas Ender

Attorneys for the plaintiff: Peter C. Houtsma of Holland & Hart, Denver, Colorado; and Carlos M. Zaffirini of Zaffirini & Castillo, Laredo

Attorneys for the defense: Horace C. Hall III and J. Alberto Alarcon of Hall, Quintanilla & Alarcon, Laredo

Verdict: Mexican industrialist Don Juan Brittingham and his brother established a tile company that they sold in 1990 for \$650 million in cash. Don Juan's daughter, Cristina Brittingham Sada de Ayala, received about \$90 million from the sale and transferred \$50 million of this to her father for him to manage. In 1996, Brittingham asked his daughter if he could lend some of the money to his wife, Ana Maria de la Fuente de Brittingham. The daughter agreed, but asked for a promissory note. The stepmother signed the promissory note for nearly \$34 million and also agreed to provide a guarantee for the debt. Allegedly, after Don Juan died and the note came due, Ana Maria wouldn't pay it. Cristina de Ayala sued her stepmother, alleging breach of the guarantee agreement, fraud and fraudulent transfer of assets. At trial, the defendant contended that the documents were forged and the \$34 million note never was funded. But on May 17, a Laredo jury awarded de Ayala \$108.24 million, including \$47 million for breach of guarantee, \$54.49 million for fraud, \$1.5 million for fraudulent transfer and \$250,000 for exemplary damages. The defense filed a motion for judg-

ment notwithstanding the verdict; this motion was denied in July. Then the defense filed a second motion seeking a new trial, claiming jury misconduct. In November, Judge Elma Ender granted the new trial without giving a reason.

NEGLIGENCE/FRAUD/INJURY TO THE DISABLED

Ernst v. Horizon/CMS Healthcare, et al.

285th Bexar County District Court/Judge Michael Peden

Attorneys for the plaintiff: George W. Mauze II and Barbara Hutzler of the Law Offices of George W. Mauze II, San Antonio

Attorneys for the defense: Charles R. Dunn and Darrell R. Greer of Houston's Dunn, Kacal, Adams, Pappas & Law; and R. Brent Cooper and Lanette Lutich Matthews of Dallas' Cooper & Scully

Verdict: Robert Ernst, then 53, went to the Blanco Vista Nursing and Rehabilitation Center in San Antonio in December 1997 for long-term care after suffering a severe stroke. The stroke had left Ernst paralyzed on the left side and dependent on a feeding tube. While at Blanco Vista, Ernst allegedly became severely dehydrated and malnourished and developed severe contractures of all four extremities. As a result, the plaintiffs alleged, Ernst developed bedsores. In April 1998, Ernst underwent surgery on the bedsores. In June, Ernst was discharged from the hospital, but he did not return to Blanco Vista. He died in October 1998. His wife, as executor of his estate, sued Horizon/CMS Healthcare Corp., owner of Blanco Vista, and Andy J. Sconzo, administrator of the facility while Ernst had been a resident. The plaintiff alleged negligence, gross negligence, fraud and injury to a disabled person. The plaintiff alleged that the facility was understaffed and that this led to inadequate resident care. The defense contended that Ernst's contractures and pressure sores were caused by complications from the stroke. But on Feb. 22, 2001, a San Antonio jury awarded \$7 million in compensatory damages, finding Sconzo 13 percent and Horizon 87 percent liable; the jury added \$75 million in punitives the next day. There was no appeal. On the fourth day of trial, the parties reached a high-low agreement. Within 30 days after the trial, Horizon had paid the Ernst estate \$20 million to settle the case.

PRODUCTS LIABILITY

Elizondo v. Tradco Corp., et al.

79th District Court, Jim Wells County/Judge Henry Schuble

Attorneys for the plaintiffs: Anthony F. Constant of Constant & Vela, Corpus Christi; and Giancarlo Nisimblat of Nisimblat & Basart, Alice

Attorneys for the defense: John G. Adami of Adami, McNeill, Paisley & Appell, Alice; and Donald Francis Lighty of Stevens, Baldo & Freeman, Beaumont

Verdict: On June 13, 1998, Robert Perez, then 19, was attempting to patch a flat tire with a sealant called Patch-a-Flat when he allegedly heard a hissing sound and saw a screw embedded. He pulled out the screw, which created a spark that allegedly caused the tire to explode. Perez sustained severe burns and broken hands. His fiancée, Melissa Elizondo, who was next to him when the explosion occurred, lost her right eye and was left with permanent epilepsy. Elizondo and Perez sued Tradco Corp., maker of the Patch-a-Flat sealant, contending that Patch-a-Flat was defectively designed and unreasonably dangerous. On Jan. 27, 2001, an Alice jury awarded \$60 million to Elizondo and \$20 million to Perez. The damages were all compensatory. Before trial the parties entered a high-low agreement. As a result, the parties settled shortly after verdict. The amount was confidential. Earlier reports indicated that the floor was set at \$2.75 million and the ceiling at \$10 million.

SECURITIES FRAUD

Moody, et al. v. Summers, et al.

405th District Court, Galveston County/Judge Wayne Mallia

Attorneys for the plaintiffs: Valorie W. Davenport and Tim Yusef of Houston's Davenport Legal Group

Attorneys for the defense: Phillip T. Bruns and Scott Humphries of Houston's Gibbs & Bruns

Verdict: The plaintiffs, Robert Moody Jr., Harry J. Brisco, Robert H. Williams and Bruce Payette, contended that they had lost money through investment in a bogus fish farming business set up by defendant Jack Summers. The plaintiffs alleged Summers set up several fish farming companies, which were supposed to produce "a predictable, sustainable yield of fish," but were really Ponzi schemes. Moody invested about \$690,000 in one company; Brisco, Williams and Payette invested smaller amounts. They lost their investments when that company, too, went belly up. The plaintiffs sued Summers and other Summers affiliates, alleging securities fraud. They also sued Greenberg Traurig, alleging that the firm had aided and abetted the fraud in violation of Texas securities law. Summers did not appear at trial, and a judgment of liability was entered against him. Greenberg Traurig denied any complicity in, or awareness of, the alleged fraud, but on Dec. 4, 2001, a Galveston jury ordered the firm and the other defendants to pay a total of \$34.7 million in actual damages. The jury added \$40.7 million in punitives the next day. The exact amount that Greenberg Traurig has to pay has yet to be determined, though the jury ordered the firm to pay \$22.43 million of the punitives. Greenberg Traurig has indicated that it will appeal if post-trial motions to set aside the verdict are unsuccessful.

PRODUCTS LIABILITY

Lopez v. American Home Products Corp.

79th District Court, Jim Wells County/Judge Terry Canales

Attorneys for the plaintiffs: Kathryn Snapka and Gregory W. Turman of the Law Offices of Kathryn Snapka, Corpus Christi; and Antonio Martinez and Trey Martinez of Martinez & Barrera, Brownsville

Attorneys for the defense: J.A. "Tony" Canales of Corpus Christi's Canales & Simonson; Randall L. Christian of Clark, Thomas & Winter, Austin; Steven G. Reade of Washington, D.C.'s Arnold & Porter; William R. Murray Jr. of Washington, D.C.'s Williams & Connolly; and Joseph Piorkowski Jr. of the Washington, D.C., office of Kansas City, Mo.'s Shook, Hardy & Bacon

Verdict: Gloria Lopez, a 48-year-old school cafeteria supervisor, began taking the drug Pondimin - the fenfluramine portion of the weight-reduction medication fen-phen - in April 1997 to lose a few pounds. Lopez lost 10 pounds over a five-month period. But fenfluramine also allegedly left Lopez with shortness of breath, the feeling that she's choking when she's sleeping, and moderate aortic regurgitation, a severe, irreversible defect in her aortic valve. After the diagnosis, Lopez sued the maker of Pondimin, American Home Products Corp., along with its affiliates Wyatt-Ayerst Laboratories Co. and A.H. Robins Co., alleging that the medication had caused her heart problems. American Home has offered \$3.75 billion to settle the claims of fenfluramine users; Lopez opted out of the global settlement. The plaintiff also accused American Home of deliberately concealing reports of adverse effects of the drug before its removal from the market. On April 3, 2001, an Alice jury awarded Lopez \$11.55 million in actual damages and \$45 million in punitives. On July 10, the award was remitted to \$8.2 million; just under \$1 million in prejudgment interest was added, bringing the total award to \$9.18 million. The case settled shortly afterward for a confidential amount.

ASBESTOS PERSONAL INJURY

Hernandez, et al. v. Kelly-Moore Paint Co. Inc.

El Paso County Court at Law No. 3/Judge Javier Alvarez

Attorneys for the plaintiffs: Lisa A. Blue and Richard I. Nemeroff of Dallas' Baron & Budd; and Enrique Moreno of the Law Offices of Enrique Moreno, El Paso

Attorneys for the defense: Gary D. Sharp of the Bloomfield Hills, Mich., office of Minneapolis' Foley & Mansfield

Verdict: Alfredo Hernandez began working as a cleanup worker at construction sites when he was a teenager in California. During this period, from 1973 through 1976, he was allegedly exposed to asbestos-containing products. In 2000, X-rays revealed that Hernandez had mesothelioma, a cancer of the lining of the lung caused by exposure to asbestos. After the diagnosis, Hernandez, along with his wife and children, sued Kelly-Moore Paint Co., alleging that his disease was caused by exposure to an asbestos-containing Kelly-Moore joint compound product called PACO. On Aug. 29, 2001, an El Paso jury awarded \$36 million, including \$15 million in punitives, to Alfredo Hernandez and \$19.5 million to his wife and four children. There will be no appeal; the case settled in November on confidential terms.

NURSING HOME NEGLIGENCE

Copeland v. Dallas Home for Jewish Aged Inc.

134th District Court, Dallas County/Judge Anne Ashby

Attorneys for the plaintiff: Kenneth B. Chaiken and Robert L. Chaiken of Dallas' Chaiken & Chaiken; and James Russell Tucker of Dallas' Tucker & Ratcliffe

Attorneys for the defense: Gail N. Friend and Alicia K. Dowdy of Houston's Friend & Associates

Verdict: Paul Copeland, 83, came to the Golden Acres nursing home in Dallas on April 18, 1996, after being treated for congestive heart failure at a local hospital. Five days later, Copeland died. After his death, Copeland's daughter and his estate sued Golden Acres' owner, Dallas Home for Jewish Aged Inc., alleging negligence and malice. The plaintiffs contended that throughout his stay at the nursing home, Copeland complained loudly and often of stomach pain, and that toward the end he was coughing up sputum with feces in it, classic signs of a bleeding ulcer. The plaintiffs alleged that the nursing home was responsible for Copeland's death for failing to properly to assess or to monitor his condition, failing to recognize the symptoms of a bleeding ulcer, failing to respond appropriately and failing to carry out doctor's orders to transport him immediately to an emergency room. The plaintiffs also sued Copeland's treating physicians, who settled before trial on confidential terms. The nursing home denied any negligence and disputed the cause of death, contending that an ambulance paramedic transporting him to the hospital killed Copeland by improperly intubating him. On May 21, 2001, a Dallas jury awarded the plaintiffs \$50.03 million, including \$34 million in punitives. The verdict has been appealed.

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