

THE NATIONAL LAW JOURNAL

VOL. 23, NO.38 © 2001 NLP IP COMPANY

The Weekly Newspaper about Law and Litigation

MONDAY, MAY 14, 2001

ON THE WEB: WWW.NLJ.COM

Calif. court bounces \$101M fraud suit

General Dynamics appeal alleged a lack of substantial evidence of fraud.

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SPECIAL TO THE NATIONAL LAW JOURNAL

A CALIFORNIA appellate court has thrown out a \$101 million fraud verdict against General Dynamics Corp.—four years, to the day, after the award was handed down.

In May 1997, a San Diego jury awarded \$1.77 million in compensatories and \$99.04 million in punitives to 97 former employees of General Dynamics' Convair division. But on May 1, California's 5th District Court of Appeal entered judgment for the defendant—finding insufficient evidence to support any of the plaintiffs' causes of action—and ordered the plaintiffs to pay court costs for General Dynamics' appeal.

Underpaying overtime?

The plaintiffs contended that General Dynamics and the general manager of its Convair Division, Arthur Veitch, had committed fraud and interference with prospective economic advantage in connection with a settlement over underpayment of overtime pay.

In July 1991, General Dynamics salaried employees in California and Arizona filed a class action against their employer, seeking overtime pay they alleged had been earned but not paid. The class included about 18,000 workers and the action was settled in the fall of 1993.

At this point, the court sent out notice of the settlement to the class members, informing them that they would be paid for all the overtime incurred during a 20 1/2-month period but had to sign up during the notice period.

But, according to the plaintiffs in the subsequent lawsuit, General Dynamics supervisors, including Mr. Veitch, told lower- to mid-level management workers at the Convair division in San Diego that if they joined the lawsuit, their careers at the company would be over.

After the notice period ended, General Dynamics closed the Convair plant, effectively ending these managers' careers at the company. The managers came to General Dynamics to put in their claims for the overtime pay but were told that it was too late.

They sued General Dynamics, charging that the company had induced them to forgo claiming their portion of the settlement and had intentionally misrepresented that the workers had viable career opportunities at General Dynamics.

The plaintiffs also contended that General Dynamics knew during the sign-up period that the company would close the Convair plant but fraudulently concealed this from the workers.

General Dynamics countered, said company spokeswoman Noreen Lyons, that there was no fraud, that the workers had been fully informed about the settlement, that there was no pressure on employees not to sign up and that the company did not make the decision to close the Convair plant until months after the notice period ended.

Four years ago, a San Diego jury rejected the defense's contentions and awarded the plaintiffs \$101 million—one of the largest verdicts of that year. *Argo v. General Dynamics Corp.*, 687646 (Super. Ct., San Diego Co., Calif.)

General Dynamics appealed, contending that "the verdict was not supported by the evidence and that the damages were excessive," said Ms. Lyons. General Dynamics hired Ellis J. Horvitz's Encino, Calif., appellate boutique Horvitz & Levy to handle the appeal, along with trial counsel Jenner & Block.

The defense focused the appeal on the con-



Team win: Ellis Horvitz was part of the team that got the huge award tossed.

tention that "there was no substantial evidence of fraud," said trial and appellate counsel Christopher D. Liquori of Jenner & Block. "That was also our core theory at the trial."

The theory had more appeal to the appeals court than to the jury. The appeals court agreed that there was no evidence of fraud, concealment or misrepresentation. "Therefore, there is no wrongful conduct to support the jury's interference verdicts... and those verdicts must fall as well."

The decision cited at length General Dynamics' attempts to sell the Convair division and the decreases in contracts and production at the plant.

According to Judge Ardaiz, General Dynamics had kept its employees fully informed of these events and as the employees knew that Convair might be sold, they were aware that "their careers at GD may well be short-lived." The court also cited a General Dynamics contract with McDonnell Douglas, the termination of which led to the shutting down of the Convair plant, and noted that this didn't occur until six months after the opt-in period had expired.

The reversal was the latest in a series of significant appellate wins for Horvitz & Levy. In the past year, the firm has won reversals in separate cases of \$20 million, \$221 million, \$405.4 million and \$174.9 million.

The plaintiffs have not yet determined their next step, according to a spokeswoman for their attorney Brian D. Monaghan of San Diego's Law Offices of Brian D. Monaghan.