

Victorious, Unheralded

1992 DEFENSE WINS

The NLJ examines some of the biggest wins for civil defendants.

By Margaret Cronin Fisk
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THE PLAINTIFF always seems to win big in jury verdicts reported by the media. But in 1992, as in other years, defendants in civil cases still won their share of jury trials. In fact, there were so many substantial wins that *The National Law Journal* has expanded its third annual list of the year's largest defense verdicts to 15, plus several other notable verdicts.

Looking back on 1992, defense counsel and defendants in civil trials held their own and scored pretty well - even though it's the plaintiffs' big-dollar verdicts that get the publicity, says James F. Stiven of San Diego's Gray, Cary, Ames & Frye. Mr. Stiven won one of the top defense verdicts of 1992 in a wrongful-death/products liability action.

Defense wins, however, are difficult to categorize. Determining the largest plaintiffs' victories is fairly easy - money awards are what counts. But defense verdicts are all the same - no liability and no damages.

Still, defense wins are at least as significant; at times they can be more important - such as when when a defense win discourages a slew of similar lawsuits.

And sometimes a defendant is considered the winner even if the jury

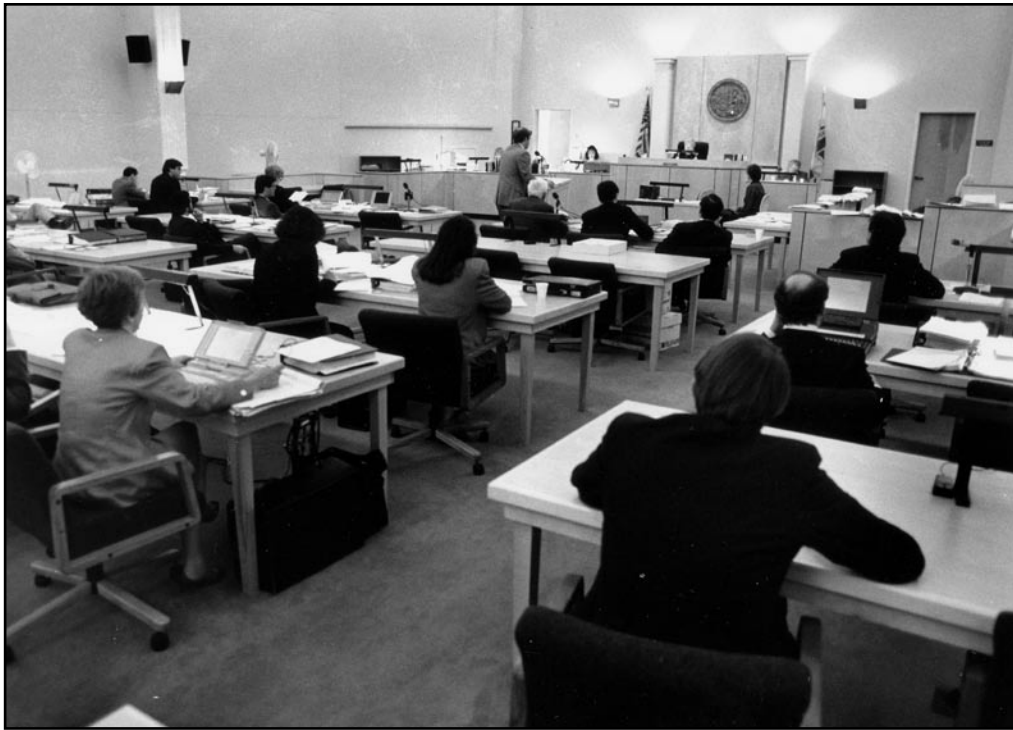


Aerojet-General's 'state of the art' waste treatment plan included this open trench and unlined drainage pond.

has found for the plaintiff - if the award was for far less than expected. One such moral victory occurred this year in Texas. The A.B. Dick Co., a business machine company, had been hit with a total judgment of \$43 million in a 1990 breach-of-contract trial. After the verdict was thrown out and a new trial ordered, a second jury awarded the plaintiff only \$378,000. The case was settled later for this amount. *Prentice Colour Inc. v. A.B. Dick Co.*, H86-595 (S.D. Texas, Jan. 22, 1992).

The verdicts that made the NLJ's list of top defense wins for the year met the following criteria:

- The win was complete - no liability and no damages.
- The amount of money at risk was substantial.
- The case wasn't frivolous - there was merit to the plaintiffs' claims, as evidenced in some of the cases by the capitulation by a co-defendant before or during the trial, by substantial settlement offers by the defense or by a previous



PHYSICS 101: 'We felt that rocket scientists probably knew about gravity,' said defense attorney Richard Seabolt after the Aerojet-General trial (shown).

plaintiffs' win in a similar trial.

- The case counters a current trend, such as in the asbestos personal-injury case or the securities fraud claim against an accounting firm.

- The case is the first jury trial for a mass tort, such as the case against a national diet center.

- The defense faced some other major obstacles.

The NLJ also tried to represent as many types of cases as possible. With these factors in mind, the following are the top 15 defense verdicts for 1992. They appear in chronological order.

Case type: Insurance coverage, CERCLA liability.

Case: *Aerojet-General Corp. v. Transport Indemnity Co.*, 262425 (Super. Ct., San Mateo Co., Calif.).

Defense attorneys: Richard Seabolt, Andrew Gordon, Brian Kelly and Laura Hill of San Francisco's Hancock, Rothert & Bunshoft for Underwriters at Lloyd's of London; Steven M. Crane of Los Angeles' Morris, Polich & Purdy for Fidelity & Casualty Co.; Richard K. Wilson of Redwood City, Calif.'s Ropers,

Majeski, Kohn, Bentley, Wagner & Kane, for Transport Indemnity Co.

Plaintiffs' attorneys: Moses Lasky, John Munter and Scott DeVries of San Francisco's Lasky, Haas, Cohler & Munter.

Date of verdict: Jan. 13, 1992.

IN 1951, Aerojet-General Corp. began operating a rocket manufacturing and testing facility east of Sacramento, Calif. During the manufacturing process, says defense counsel Richard Seabolt, highly explosive fuels would stick to mechanical parts. To get these propellants off the equipment, he says, Aerojet's employees used solvents and water. The byproducts of this cleaning process drained into trenches.

Aerojet called them evaporation ponds, Mr. Seabolt says. But much of the material did not evaporate. Instead, he reports, the ponds overflowed and leaked and siphoned off an incredible amount of solvent. Ultimately some 170,000 gallons of a toxic chemical called trichloroethylene would seep into the ground and groundwater underneath

these ponds.

Aerojet didn't stop until they were caught in 1979, he adds. The Aerojet site was No. 1 on the first Superfund list in California. And the list was not alphabetical.

From 1980 to 1990, Aerojet spent some \$60 million on removing 10,000 gallons from the 170,000-gallon toxic pool, and it expected to spend another \$76 million through the year 2000. But the total bill for cleanup was unknown. The company had estimated that final costs could rise to \$500 million. But, Mr. Seabolt says, estimates from the Environmental Protection Agency and the General Accounting Office indicate the price may be even as high \$3 billion.

Aerojet sued more than 40 insurers to recover the costs of the cleanup. Mr. Seabolt says his client, Cheshire and Cos., a unit of Underwriters at Lloyd's of London, had the highest exposure – it held more than half of the policies written from 1951 through 1984.

Aerojet said this was all accidental, that they never expected or intended to pollute, Mr. Seabolt says.

But the insurers refused to pay, contending that Aerojet knew or should have known that the chemicals would leak. We felt that rocket scientists probably knew about gravity, Mr. Seabolt says.

On Jan. 13, 1992, the jury agreed with the defense, deciding unanimously that Aerojet's actions were not accidental and that the insurers do not have to pay the company's cleanup costs. The plaintiff is appealing.