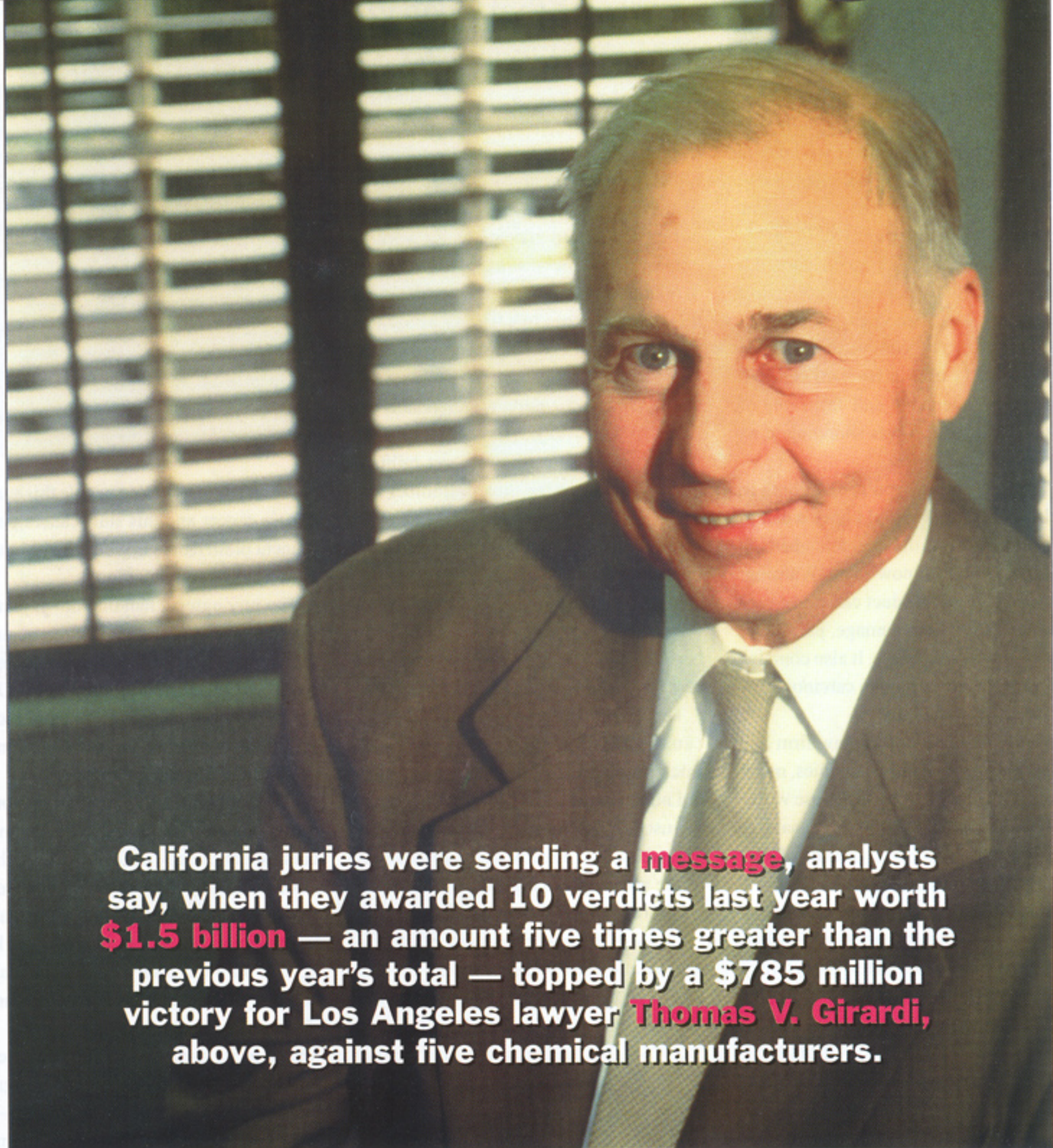


LAW BUSINESS

PAYBACK



California juries were sending a **message**, analysts say, when they awarded 10 verdicts last year worth **\$1.5 billion** — an amount five times greater than the previous year's total — topped by a \$785 million victory for Los Angeles lawyer **Thomas V. Girardi**, above, against five chemical manufacturers.

TOXICTORT

A Los Angeles Superior Court jury awarded 29 Lockheed aerospace workers the year's largest verdict — a whopping \$785 million against five petrochemical companies that failed to warn them of potential hazards in the solvents they supplied. By Tom Orewyler

Prominent Los Angeles plaintiffs' attorney Thomas V. Girardi often finds vindication in the jury box. Recently, though, he found it in a more unusual place.

Five months after a jury returned a whopping \$785.4 million verdict against five petrochemical manufacturers on behalf of his clients, who were employed at Lockheed Corp. in Burbank, Girardi received a telephone call from one of his law clerks who was shopping at an Ace Hardware Store.

"He says, 'Tom, you're not going to believe this. In my hand I have a can of solvents from one of these defendants,'" Girardi recalls. "It now says, 'Warning: Exposure to this product can cause central nervous system damage, peripheral nervous system damage. It also contains benzene, a known human carcinogen.' . . . Isn't that something?"

"To think that our little law firm had some impact on major companies, much more so than the money that these workers have been paid or should be paid, is really gratifying," says Girardi of Los Angeles' Girardi & Keese.

Girardi's "little law firm" landed the top California Jury award in 1998, when a Los Angeles Superior Court jury awarded 29 current and former Lockheed aerospace workers a total of \$785.4 million in August. Of the total, only \$25.4 million consisted of compensatory damages. The punitive damages, which totaled \$760 million, were later

cut in half by Judge Richard C. Hubbell, reducing the cumulative amount to \$405 million. The defendants are appealing.

One of the longest sagas in the history of the L.A. Superior Court, the 13-year-old case involved allegations by workers employed at Lockheed's top-secret Skunk Works plant from the 1950s to 1985 that they were exposed to a variety of hazardous chemicals, but never warned of the dangers.

The chemical-company defendants allegedly provided the materials to Lockheed, builder of top-secret military aircraft including the Stealth Bomber and the U-2 plane. The chemicals were used throughout the manufacturing process, mostly as cleaners and degreasers.

In the 1980s, the plaintiffs began to suffer a variety of ailments ranging from headaches and skin rashes to terminal cancers.

The defendants argued, in part, that because of the confidential nature of Lockheed's Stealth Bomber project, they did not know how their products were being used. In addition, they contended, the defendants had already warned Lockheed of the chemicals' dangers.

Girardi had a different take.

"None of these workers wore much protection and they were criticized for that by the other side," he says. "But if you don't tell the guy why you should use the protection, no one's going to start putting on masks and aprons and gloves and all that stuff if their only warnings are that it's going to cause skin irritation.

\$785.4 million

Case: Lockheed Litigation Cases, Group V, Los Angeles Superior Court, Judicial Council Combination Proceeding No. 2967

Plaintiffs' Attorney: Thomas V. Girardi of Girardi & Keese, Los Angeles

Defense Attorney: Laurence F. Janssen of Steptoe & Johnson, Los Angeles

Trial Judge: Los Angeles Superior Court Judge Richard C. Hubbell

Date of Verdict: Aug. 6, 1998

Status: Reduced by trial judge to \$405.4 million; on appeal

"Now you start telling people this stuff causes cancer and this stuff causes permanent brain damage, well, you have an entirely different situation."

The jury agreed, handing down punitive-damage verdicts against the manufacturers — \$252 million against Exxon Corp., \$236 million against Shell Oil Co., \$145 million against Ashland Inc., \$81 million against Unocal Corp. and \$45 million against DuPont.

Even though the litigation arising out of the workers' exposure to the chemicals is commonly referred to as the "Lockheed litigation cases," Lockheed itself had already settled out of the matter, agreeing in 1992 to pay 640 workers \$33 million. Many other chemical-company defendants have settled for undisclosed amounts.

Due to its complexity, the Lockheed cases were divided into separate litigation groups—and thus separate trials—which are classified by types of toxins

"To think that our little law firm had some impact on major companies... is really gratifying," says plaintiffs' attorney Thomas V. Girardi.



and the manufacturers of those chemicals.

The Group 1 trial in 1992 resulted in a hung jury, 8-4 in favor of the plaintiffs.

"It goes to show that nine months of trial and \$4 million dollars [in expenses] and my great persuasiveness didn't move one soul," Girardi says. "It's been said that I'm one of the best lawyers in Southern California to get eight jurors to vote for me."

That case was retried the following year and resulted in a \$1.6 million award. Trials on the second, third and fourth groups netted verdicts of \$10.6 million, \$4.5 million and \$20 million, respectively. In August came the \$785-million award. A sixth litigation group is expected to go to trial sometime this year.

According to Girardi, he hoped the initial verdicts would have provided a benchmark for future settlements. "The idea was we could pick some and that would give an [idea] as to the value of these cases and then we could resolve them all," he says. "We underestimated the oil companies' vigor. . . ."

The trials have all lasted from four to nine months, and jury deliberations have gone from one to three months. In the process, Girardi's firm has forked out nearly \$15 million in expenses for the five trials, from which they have yet to see any money.

"What we've done for these workers no law firm has ever done for a group of workers," Girardi says. Costs are sure to mount as some 30 more groups are expected to go to trial at some point.

Shelling out megabucks is the only way to go when the opponents are corporate giants, Girardi believes.

"They're so well-financed," he says of the deep-pocketed chemical manufacturers. "Generally, in these toxic

cases the big companies just run over the plaintiffs, and the plaintiffs' lawyers, generally speaking, end up in debt, in despair and in a ditch."

Not so for the hugely successful Girardi, even though 13 plaintiffs in the most recent case were awarded nothing, either because the jury found they could not prove the chemicals caused their illnesses, or because they had not met the statute-of-limitations requirements.

With sizable victories for most of his clients, however, Girardi isn't complaining about jurors. "You take these people that know relatively little about these chemicals, know nothing about the causative factors between the chemicals and these diseases, and listened to all that testimony and ferreted out pretty good results every time," Girardi says. "I disagreed with some of the results the day they gave them, but if you stand back a couple of weeks, you say, 'Listen, those were pretty good results.'"

There were times when it was difficult for Girardi and his clients to see the light at the end of the tunnel, however.

"First of all, you have to put together a story of how much of this stuff these people were exposed to," he says. "That is sometimes very difficult, and after you do that then you somehow have to link these problems they have to these chemicals."

"There are medical problems that can be caused by other things. Cancer is one of them. A lot of people get cancer who have never been to the Lockheed plant, and peripheral nerve damage can happen with several other things.

"And when you talk about psychological problems of forgetfulness and things like that, Holy Toledo, everybody loses a little bit each year anyway. So then to package that so that the jury is convinced . . . is wonderful," Girardi says.

Presenting compelling arguments isn't new to Girardi, whose most recent

megavictory occurred two years ago, when he settled a pollution case against Pacific Gas & Electric Co. for \$333 million.

According to Laurence F. Janssen, lead counsel for the petrochemical manufacturers, the most recent Lockheed case should have had a different outcome.

For one thing, the trial judge should not have ordered the jury to find — based on a previous jury's conclusions — that the defendants' conduct was oppressive. According to Janssen, the judge's instruction laid the groundwork for the hefty punitive damage award.

"In essence, this verdict was a combination of a number of sequential legal errors that, in our view . . . ratcheted up the potential for something exactly like this to happen," says Janssen, of Steptoe & Johnson in Los Angeles.

In addition, Janssen says, Judge Hubbell made inappropriate comments to the jury. In one particularly troublesome remark, Hubbell said, "Now, do you want to set an example for the world? It is not just the people here, or the people in Los Angeles County or the State of California or the United States; it is worldwide. These people sell chemicals every place, you see. Do we want to send out a message that this conduct will not be countenanced in the least in Los Angeles Counties? [sic] That is your decision."

Following the trial, Hubbell denied the defendants' motion that he recuse himself, but did remove himself from future Lockheed litigation cases.