

LOS ANGELES

# Daily Journal

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## Technology Captured Star Role in Entertainment Law

By Garry Abrams

Daily Journal Staff Writer

Controversy and change, those handmaidens of the law, helped shape the entertainment business in 1996 as federal telecommunications deregulation and the continuing onslaught of technology created rich new prospects for some attorneys.

The threat of profound but dimly understood change also helped spur mega-mergers, notably Disney with ABC and Time-Warner with Turner Broadcasting. Both corporate marriages received federal approval this year, further consolidating the already narrow field of media behemoths controlling film, broadcast, cable, music and publishing empires. But a few skeptics wondered whether these new, humongous combinations would be better able to withstand the technological threats of the 21st century, or are Goliaths vulnerable to stone-slinging from new, decentralized media, notably the Internet.

### The Big Picture

A FOCUS ON 1996

Meanwhile, the clash of Hollywood egos reverberated in federal and state courts as assortments of studio executives, writers, producers, actors, directors and entertainment conglomerates waged high-profile battles over—what else?—money.

Criminal attorneys got a workout, too, in an autumn eruption over alleged links between rap music mogul, Death Row Records' Marion "Suge" Knight, and his prosecutor, Los Angeles Deputy District Attorney Larry Longo. The matter became an issue in the waning days of the district attorney's race, narrowly won by incumbent Gil Garcetti.

Almost certainly the biggest single event of the year, in terms of broad and lasting impact, was the passage by Congress in February of the Telecommunications Act of 1996, an omnibus bill that threw out or



MARK ROBERT HALPER/ For the Daily Journal

**TOM GIRARDI**— The high-profile litigator helped bring a novel antitrust claim challenging Hollywood net profit participation contracts, a suit that was seen as one of the more notable entertainment law stories over the past year.

rewrote large chunks of federal regulation dating back to the Great Depression.

The bill took down fences that had divided prime franchises between phone companies and cable TV companies and others in the burgeoning electronic universe where the "convergence" of communications, computer and entertainment media has been a mantra. The bill also sought to impose limits on "indecent" speech over computer networks. At year's end the constitutionality of the Communications Decency Act—a section of the telecommunications bill—was before the U.S. Supreme Court *ACLU v. Reno*, 96-963. Earlier, a special federal appeals court panel in Philadelphia had struck down the law, which sought, on the grounds of protecting children from smut, to prohibit transmission of objectionable information

via cyberspace.

Yet another provision of the telecommunications bill goaded broadcasters into developing ratings for TV programming, a process that proved contentious as details of the ratings plan got a formal unveiling Thursday in Washington, D.C. Parents' groups, lawmakers and teachers lambasted the new ratings—modeled on the movie ratings system that categorizes movies by age appropriateness—as inadequate. The IV ratings are to be used in conjunction with the V-chip, a remote control electronic device that will be installed in new IV sets and allow parents to block out programs with objectionable content. Theoretically, the reform bill created a free-for-all in the delivery of communications and entertainment services to consumers, including a mushrooming number of com-

puter and software companies who threatened to undercut traditional entertainment and communications providers via the Internet.

More certainly, the bill created instant work for attorneys specializing in telecommunications and mergers. Among other things, the bill sparked a round of radio and television station acquisitions by lifting the ceiling on how many of these broadcast outlets may be owned by one company.

Whatever the ultimate impact of the telecommunications revolution, some things did not change in Hollywood this year.

People still found reasons to sue each other for sums of money that would exceed the gross national product of some countries.

In April, former Walt Disney Co. executive Jeffrey Katzenberg sued the Magic Kingdom for a minimum of \$250 million, claiming that Disney owed him at least that much from profits earned by such hits as 'The Lion King.' Katzenberg's suit claimed that he had a contract entitling him not only to a slice of profits already earned but to all future profits from films and programming made during his tenure at the studio. So far, the contract has not turned up among papers filed with Los Angeles Superior Court. *Katzenberg v. Disney*, BC147864.

To push his claim, Katzenberg hired two high-powered attorneys and their firms—Bert Fields of Greenberg, Glusker, Fields Claman & Machtinger of Los Angeles and Herbert M. Wachtell of Wachtell, Lipton, Rosen & Katz of New York.

By mid-December, Katzenberg's case was echoed by the nation of former superagent Michael Ovitz as president of Disney. Like Katzenberg, Ovitz left the studio after a rocky relationship with Disney chairman Michael Eisner. Reportedly Ovitz's severance- compensation

could total \$90 million. And his exit, apparently, was tailored to avoid a Katzenberg-style lawsuit.

In June, U.S. District Judge Robert M. Takasugi dealt a blow to the major studios by granting class-action status to a novel antitrust suit challenging Hollywood net profit participation contracts. *Estate of Garrison v. Warner Bros.*, CV95-8328 (CD. Cal).

By granting class-action status, Takasugi made the studios potentially liable for an estimated \$1 billion in payments to writers, actors, directors and others who had signed so-called "Hollywood accounting" contracts. Such contracts seldom pay participants a share of profits because under studio accounting practices even the biggest blockbusters seldom show a profit.

The suit was initially filed on behalf of the heirs of Jim Garrison, the former New Orleans district attorney who launched an independent investigation into the assassination of President John F. Kennedy. A book written by Garrison became the basis of Oliver Stone's movie "JFK"

The studios immediately appealed Takasugi's ruling to the 9th U.S. Circuit Court of Appeals, which has not yet acted.

A telltale sign of the suits' possible importance was indicated by the large caliber legal artillery on both sides. Plaintiffs' attorneys included noted litigators Joseph W. Cotchett of Burlingame's Cotchett & Pitre and Tom Girardi of Los Angeles' Girardi & Keese. The studios rolled out attorneys from many of LA's major firms—including Bert Fields, Louis M. Meisinger of Troop Meisinger, Steuber & Pasich, Sanford Litvack of the Walt Disney Co. and Frank Rothman, former head of MGM and now a partner at Skadden, Arps, Slate, Meagher & Flom.

Plaintiffs' attorney Girardi said earlier this year that he hopes the suit will "take the profit out of deceit." He added, I'm

not saying the studios shouldn't have the lion's share of the profits. But maybe the bone and a little bit of meat and perhaps some of the marrow should go to the person who brought them to the dance."

Finally, from before Halloween until just before Thanksgiving, the case of Death Row Records owner Marion "Suge" Knight roiled the Los Angeles district attorney's office, drawing wide media attention. Knight was sent to the county jail Oct. 22, following allegations of probation violation. He had been given a suspended nine-year prison term and five years' probation in a plea bargain on 1992 charges of assault with a firearm. In late November, Knight's probation was revoked following a hearing.

In between these events, the case became embroiled in controversy because Knight had stayed at a beach house owned by the family of his prosecutor. For a time, it seemed that the California attorney general's office might step in to take over the case because of conflict-of-interest charges.

That didn't happen. But during the Los Angeles DA election race, challenger John Lynch accused incumbent Gil Garcetti of trying to keep the case under wraps until after the election.

Los Angeles Superior Court Judge J. Stephen Czuleger injected lingering suspense into the affair. After revoking Knight's probation, he ordered the record label owner to undergo a 90 day diagnostic evaluation before passing sentence. Many experts had predicted Knight would be sentenced immediately to nine years in prison. Knight's sentencing is currently set for late February.

With denouements to the Knight, Garrison and Katzenberg cases pending, predicting some aspects of 1997 is a snap: The New Year will have some hangovers from 1996.

The quarterly newsletter of The TLPJ Foundation

# PUBLIC JUSTICE

Fall 1996

## Thomas Girardi Wins Trial Lawyer of the Year Award

Los Angeles attorney **Thomas V. Girardi** has been awarded the 1996 Trial Lawyer of the Year Award for his work on the *Lockheed litigation Cases*. The nationally prestigious award is bestowed annually upon the trial lawyer who has made the greatest contribution to the public interest by trying or settling a precedent-setting case. Outgoing TLPJ Foundation President Michael E. Withey announced the winner and presented the award to Girardi at the fourteenth annual TLPJ Foundation membership party on July 28 in Boston.

"Tom Girardi demonstrated how trial lawyers can win justice for working people against the most powerful and wealthy corporations in this country," said Withey. "We are proud to honor him for his tireless work and extraordinary success."

Over the past eight years, Girardi, of Los Angeles' Girardi & Keese, represented 625 former and present employees of the Lockheed Corporation in a series of three trials against large chemical companies for failing to warn workers of the hazards of their products.

In the *Lockheed Litigation Cases*, Girardi confronted extraordinary procedural obstacles and powerful, wealthy opponents, including Exxon, Shell Oil Corp., and Unocal. The lawsuit began in the 1980s as a workers' compensation case against Lockheed. But in prosecuting the case, Girardi and his co-counsel developed proof that Lockheed had lied to its workers Un-

der the fraud exception to the workers' compensation laws, the workers could then sue the company in court.

The plaintiffs had worked in a 'Lockheed facility in California known as the Skunkworks,' manufacturing and assembling top secret military aircraft for the U.S. Government. The buildings were completely sealed and the windows painted black. Employees had to have top secret security clearance. The plaintiffs often worked ten hours a day six days a week.

In performing their work, the employees were required to utilize numerous toxic



**Award Winner Tom Girardi with outgoing Foundation President Mike Whitney.**

chemicals, including sealers, paints, adhesives, and similar products. These chemicals can cause serious medical injuries including cancer, nerve damage, and brain damage. The workers' illnesses ranged from rashes or mild congestive problems to peripheral nerve damage and cancer.

The chemical companies contended that the warnings sent with their products were

adequate, and that it was Lockheed's responsibility to care for its workers. In 1992, Lockheed settled with the workers for \$33 million. The case then proceeded against chemical companies, which ought tooth and nail, vigorously resisting discovery and contesting virtually every claim.

The first trial took over nine months, and the jury deliberated for three months. It was the longest civil jury deliberation in the history of L.A. County. The second trial took place in 1994. The third trial began in early 1995. The jury found that 51 chemicals contained inadequate warnings. It also found nine of the defendants guilty of dispicable conduct for providing inadequate warnings in conscious disregard of the plaintiffs' rights. This finding made the defendants liable for punitive damages. In August of 1995, the jury returned a verdict awarding seven of the plaintiffs \$10.6 million. This was the first time that chemical companies were held accountable for failing to warn in a mass toxic exposure setting.

We congratulate Tom Girardi for his extraordinary accomplishments as a trial lawyer fighting for - and winning - justice!

The outstanding work of Girardi and the other finalists for the 1996 Trial Lawyer of the Year Award, and the winners of the Public Justice Achievement Award, is chronicled in *Trial Lawyers Doing Public Justice 1996*, published by The TLPJ Foundation in September. Contact TLPJ headquarters for additional copies.

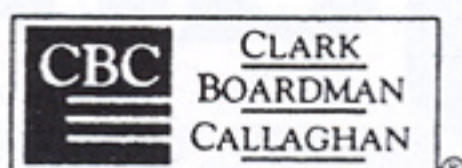
## TLPJ's Vision Statement

Trial lawyers for Public Justice is a national public interest law firm that marshals the skills and resources of trial lawyers to create a more just society. Through creative litigation, and innovative work with the broader public interest community, we:

- Protect people and the environment;
- Hold accountable those who abuse power;
- Challenge governmental, corporate, and individual wrongdoing;
- Guard access to the courts;
- Combat threats to our judicial system; and
- Inspire lawyers to serve the public interest.



## 1996 LEGAL EAGLES



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See the December issue of *CALIFORNIA LAWYER* for a complete listing.