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On a Roll

In Two Years, the Toxic Tort King Has Racked Up \$1B in Awards

By **Garry Abrams**
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Dubbed by a colleague "the king of toxic torts," plaintiff's attorney Thomas V. Girardi of Girardi & Keese is on what appears to be the roll of a lifetime. In the last two years Girardi has racked up awards totaling well over \$1 billion — which includes a verdict topping \$760 million in punitives last week — in two huge toxic-chemical cases waged against some of the biggest names in corporate America.

For the well-known Los Angeles trial lawyer, it is a run of good fortune that manifests itself in his face, which seems to bear a nearly permanent expression of beaming cheeriness.

But beneath Girardi's ebullience over his recent trial successes lies the bedrock of legal reality. Even though he is probably at the top of his legal game after three decades of lawyering, Girardi, 58, acknowledges it is too early to start counting most of that money.

In fact, winning last week's stunning award from a jury may be the easy part, Girardi believes. The history of the litigation suggests that the defendants are likely to fight hard to take the shine off the victory, as he explained in an interview this week about the complex and controversial case.

"Well, you celebrate more, really, when the claim gets affirmed," Girardi said, referring to the appeals and post-trial maneuvering that lie ahead. "This [the punitive verdict] is the first step... We have a lot of work to do to affirm it."

Years Work Ahead

The caution seems justified. Girardi's opponents say they plan to throw boulders across his path to wreck what they regard as an express train from tort hell.

An Girardi himself vows to use all his skills to dodge every rock in what he predicts will be an ultimately successful but perhaps years-long defense of the mammoth verdict.

The coming struggle was triggered last Thursday when a Los Angeles Superior Court jury sided with 29 current and former aerospace workers represented by Girardi, awarding them punitive damages totaling \$760.6 million against five petrochemical companies.

A week earlier the jury had awarded compensatory damages totaling \$25.4 million to the workers, who claimed they were never warned of the dangers to their health from chemical exposure at a secret Lockheed Corp. defense plant known as the "Skunk Works."

The verdict drew global attention. For example, the Sydney Morn-



MARK ROBERT HALPER / For the Daily Journal

THOMAS V. GIRARDI — "I've never been in a case with this sort of animosity," said the high-profile attorney about toxic-chemical litigation that resulted in a huge verdict last week.

ing Herald's headline on its Internet site converted the punitive award into Australian dollars, or \$1.26 billion in Down Under currency.

The losing companies in the Lockheed case — Exxon Corp., Unocal Corp., Ashland Inc., Shell Oil Co. and DuPont — supplied solvents and other materials to Lockheed Corp., builder of the stealth fighter and other advanced military aircraft. Exxon was ordered to pay the largest amount, \$252 million, while Shell was assessed \$236 million, Ashland \$145 million, Unocal \$81 million and DuPont \$45 million.

Lead defense attorney Laurence F. Janssen of Steptoe & Johnson said the verdict will be appealed. Janssen said a number of post-trial maneuvers also are being considered, including renewing an effort to disqualify Superior Court Judge Richard C. Hubbell from the case, which would set the stage for a new trial.

Last week's huge verdict was the latest phase in a complex, 13-year-old case involving more than 600 Lockheed workers. Trials began in 1992 after a number of pretrial issues were resolved, including an agreement to divide the plaintiffs into groups of about 35 for separate trials.

In the four trials held so far, the claims of 130 workers have been heard, according to Janssen. Because of their legal and administrative complexity, the separate cases have been assigned an overall case number. Officially the case is titled *Orozco v. Lockheed*, Judicial Council Coordination Proceeding No. 2967. Lockheed, although it continues to

Girardi On the Roll of a Lifetime

be named in the action, settled out of the case in 1992 for about \$33 million.

Girardi and Janssen agreed that each of the trials has been extraordinarily lengthy. Trials have lasted from four to nine months while jury deliberations have ranged from one to three months. Janssen figures that jurors spent an average of three hours deciding the claims of each worker.

Both lawyers also agreed that the trials have been exceptionally hard-fought.

"I've never been in a case with this sort of animosity," Girardi said, noting that years ago he offered to settle with each of the chemical defendants for \$400,000 "and they told us to pound salt."

Commented Janssen, "What you see happening in the past is prologue for the future."

Perhaps one of the most bitter clashes in this legal war has been waged over the trial-judges themselves.

Defense attorneys have repeatedly sought to remove both judges who have presided over the litigation. In the first instance they were successful. Although Janssen was not part of the group, he said other defense attorneys persuaded then Superior Court Judge Melvin Grover to recuse himself because he was allegedly biased in favor of the plaintiffs.

However, subsequent attempts by defense attorneys to disqualify Judge Hubbell have been defeated at the appellate level on three separate occasions. In each instance, attorneys for the chemical companies asserted that Hubbell was no longer impartial — that he had become "an advocate" for the plaintiffs.

Still one attempt to remove Hubbell nearly succeeded, according to appeals court records.

On March 18, 1996, Orange County Superior Court Judge Theodore E. Millard, who had been assigned to hear the first disqualification motion, issued an order removing Hubbell from

the case. According to court papers, Millard's order noted that Hubbell appeared "to have crossed the line of required impartiality and has demonstrated an implicit, if not actual, bias against the defendants."

Hubbell appealed, and a panel of the 2nd District Court of Appeal reinstated him July 1, 1996. The court's unpublished opinion defended Hubbell's conduct of the trial, asserting that "a reasonable person would not have viewed Judge Hubbell's understandable frustration with the at time contemptuous conduct of defendants' counsel as evidence of bias; rather as an arduous attempt to control defense attorneys who apparently believed it was their province, and not that of the court, to manage the litigation."

The issue of Hubbell's impartiality resurfaced last week in the wake of the verdict.

Partial transcripts supplied to news media quoted Hubbell as making remarks to the jury that seemed inappropriate. For example, one passage quoted by a newspaper had Hubbell saying, "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 everywhere."

Girardi, who objects to Hubbell's removal, supplied to the Daily Journal a certified transcript of the proceedings in which the judge made the above comments. According to that transcript, the full paragraph of Hubbell's comments reads, "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 everyplace, 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."

Girardi argued that large petrochemical companies often blame trial judges for their

losses in court. "We've see in other cases throughout the country that this is their same spin that the oil companies do. Whenever they lose, it's that the judge is biased," he said.

As for the Lockheed cases that have yet to be tried, the issue of Hubbell's alleged impartiality appears to be moot. In the same transcript containing his reputedly biased remarks, Hubbell indicated that he plans to withdraw from the Lockheed cases, according to the transcript. "I guess this is my last one, because I'm not going to do any more of these cases," Hubbell says in the transcript.

Whether the \$760 million verdict remains intact, Girardi indicated he will have no shortage of other cases. Among others, it was announced last week that Girardi would represent the legal newspaper publishing firm Metropolitan News Co. in an anticompetition suit it has filed against the Daily Journal Corp., publisher of the Los Angeles Daily Journal. Girardi declined to comment on the litigation.

On the toxics front, Girardi said his firm, which he says has spent \$14 million so far to wage the Lockheed cases, is funding research into another aspect of toxic chemicals in the aerospace industry, paving the way for possible eventual lawsuits.

From the research, conducted by scientists at New York University, Girardi said he hopes to learn the potential effects that chemicals associated with the firing of rocket motors can have on human beings. He maintained that the ground water in a number of locations in California has been contaminated by rocket residues, creating "cancer clusters" among people living near rocket testing centers.

"When they fire these rockets, they normally fire off in hundreds of thousands of gallons of water to catch the residue," Girardi said. "And that water is then dumped and sooner or later it finds its way down into the well system."