

Daily Journal

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Top Verdicts

The largest and most significant verdicts and appellate reversals in California

TOP PLAINTIFFS' VERDICT BY DOLLAR

Wark Entertainment Co. et al. v. Twentieth Century Fox Film Corp.



DANIEL A. SAUNDERS



JOHN V. BERLINSKI



KIMBERLY A. MEYER

case INFO

Arbitration, breach of contract

JAMS, Los Angeles County Retired Judge Peter D. Lichtman, as neutral

\$178.965 million

Plaintiffs' lawyers: Kasowitz Benson Torres LLP, John V. Berlinski, Daniel A. Saunders, Kimberly A. Meyer, Alexandra E. Siegel and Candace Frazier

Defense lawyers: Munger Tolles & Olson LLP, Glenn D. Pomerantz; O'Melveny & Myers LLP, Daniel M. Petrocelli, Molly M. Lens

Forensic anthropology was the focus of the popular TV series "Bones," even as forensic accounting led lawyers for its stars and producer to persuade a JAMS arbitrator to award them nearly \$179 million for fraud and breach of contract by distributor Twentieth Century Fox Film Corp.

The plaintiffs' lawyers at Kasowitz Benson Torres LLP said it was the largest arbitration award ever issued in a profit participation dispute.

"This case was a challenge because we were dealing with net-profits accounting, all the relevant documents were in the hands of our adversaries and unknown to us, and we aimed to prove fraudulent intent," said lead plaintiff lawyer John V. Berlinski.

The big number, announced in May 2019 by JAMS arbitrator Peter D. Lichtman, was knocked down to about \$50 million by a Los Angeles County Superior Court judge after defense lawyer Daniel M. Petrocelli of O'Melveny & Myers LLP argued successfully that the arbitrator's \$128 million award for punitive damages had to be erased because the contracts at issue expressly waived a right to punitive damages. The judge rejected the plaintiffs' and arbitrator's reasoning that the entire agreement became "fully arbitrable" when Fox submitted the complaint to arbitration.

The parties later settled on undisclosed terms, Berlinski said.

"It is imperative for arbitrators to scrupulously abide by the parties' arbitration agreement,"

Petrocelli said, "particularly as to limits on arbitral authority."

Daniel A. Saunders, the Kasowitz partner who served as plaintiffs' co-lead counsel, said he and his team endured tough discovery battles to find the evidence they needed. "In addition, our case at the hearing was presented through our calling our opponent's executives as witnesses. We'd deposed most of them, but it's a unique challenge to rely on hostile witnesses, to get information from people who are trying to make the best case they can for their own company." *Wark Entertainment Inc. v. Twentieth Century Fox Film Corp.*, 1220052735 (JAMS Los Angeles, filed April 8, 2016); BC602287 (L.A. Super. Ct., filed Nov. 30, 2015).

The Kasowitz team's success at

proving its claims through hostile witnesses was reflected in the arbitrator's ruling. Lichtman wrote, "A myriad of explanations by the Fox witnesses cannot account for their complete disregard for obvious and uncontroverted facts."

Saunders said, "The conventional wisdom is that arbitrators tend to be more favorable to defendants. So this outcome was particularly satisfactory for us and our clients."

—John Roemer