

# Daily Journal

FEBRUARY 17, 2016

## TOP VERDICTS OF 2015

The largest and most significant verdicts and appellate reversals handed down in California in 2015

### TOP APPELLATE REVERSALS

## Soto v. BorgWarner Morse TEC Inc.

#### case INFO

#### Punitive damages

2nd District Court of Appeal, Division Four  
Justices Audrey B. Collins, Norman L. Epstein and Nora M. Manella

**Defense attorneys:** Gibson, Dunn & Crutcher, Theodore J. Boutrous Jr., Joshua S. Lipshutz, Joseph C. Hansen; Selman Breitman LLP, Jerry C. Popovich; Booth, Mitchel & Strange LLP, Steven M. Mitchel

**Plaintiffs' attorneys:** The Arkin Law Firm, Sharon J. Arkin; The Farrise Law Firm, Simona A. Farrise

The challenge for defense lawyers at Gibson, Dunn & Crutcher LLP was to convince a state appellate panel that the award could not stand.

It would have been the third-largest punitive damages award to survive appeal in California, but the 2nd District Court of Appeal agreed last July with the Gibson Dunn team that the plaintiffs' lawyers had made major errors at trial requiring reversal. *Soto v. BorgWarner Morse TEC Inc.*, 239 Cal.App. 4th 165.

Prominent Gibson Dunn appellate lawyer Theodore J. Boutrous Jr. argued that the plaintiffs' economic expert testified about the financial health of BorgWarner Inc., the parent of the actual defendant. The expert analyzed the wrong company, Boutrous contended.

The appellate panel noted that while the testimony made the parent corporation appear financially healthy, that shed no light on the actual defendant company's profits, losses or debts.

That undercut the big punitives award because such damages turn on the ability of a defendant to pay them.

Commented Boutrous in an email after the ruling, "Punitive damages pose a significant risk of violating a defendant's due process rights and, for that reason, the California Supreme Court has established important requirements that must be met before punitive



**THEODORE J. BOUTROUS JR.**

damages may be imposed.

"In this case, the plaintiffs ignored those requirements and, as a result, the Court of Appeal properly struck what would have been one of the largest punitive damage awards in California history," he added.

— John Roemer

As punitive damages awards go, they don't come much bigger than the \$32.5 million assessed by a Los Angeles County Superior Court jury in an asbestos-related wrongful death suit against automotive industry parts supplier BorgWarner Morse TEC Inc.