

# Daily Journal

SEPTEMBER 21, 2016



## Lawyers in California 2016

### LITIGATION

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SPECIALTY: INTELLECTUAL PROPERTY, ANTITRUST & COMPETITION

Thomas won one of the largest single-plaintiff verdicts in U.S. history when a Santa Clara County jury deliberated fewer than five hours before awarding client Hewlett-Packard Co. more than \$3 billion on breach of contract claims against Oracle Corp.

The June 30 conclusion to a five-week trial culminated more than five years of contentious litigation, Thomas said, following Oracle's decision to cease offering new versions of its software products to customers running HP's high-end Itanium servers. *Hewlett-Packard Co. v. Oracle Corp.*, 1-11-cv-203163 (Santa Clara Super. Ct., filed June 15, 2011).

In early September, Santa Clara County Superior Court Judge Peter H. Kirwan denied Thomas' motion for pre-judgment interest. Oracle has said it will appeal the verdict; that could lead to more interest payments on the big award, Thomas pointed out. "Post-judgment interest begins to accrue at about \$1 million a day during the appellate process," he said. "If we prevail on

appeal, we will get post-judgment interest as a matter of right. It's at a pretty healthy 10 percent."

Thomas argued for HP that Oracle breached a 2010 contract that required it to continue offering its suite of products on HP platforms after former HP CEO Mark Hurd became Oracle's co-president. HP claimed poaching and Oracle CEO Larry Ellison released statements questioning the actions of HP's board of directors.

Before Santa Clara County Superior Court Judge James P. Kleinberg, Thomas won an earlier phase of the trial at which the judge found that a contract existed which required Oracle to allow its software to run on Itanium for as long as HP wanted.

"Oracle appealed that ruling, and that put the case on ice for years," Thomas said. His arguments before the 6th District Court of Appeal resulted in an August 2015 pro-HP opinion.

"I've been living with this case for five years," Thomas said."

— John Roemer

