

# Daily Journal

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## TOP VERDICTS OF 2016

The largest and most significant verdicts and appellate reversals handed down in California in 2016

### TOP PLAINTIFFS' VERDICTS BY DOLLAR

## Hewlett-Packard Co. v. Oracle Corp.

#### case INFO

#### Breach of contract

Santa Clara County

Superior Court Judge Peter H. Kirwan

**Plaintiff lawyers:** Gibson, Dunn & Crutcher LLP, Jeffrey T. Thomas, Samuel G. Liversidge, Rodney J. Stone, Jay P. Srinivasan, Dhananjay S. Manthripragada, Jared Strumwasser, Lauren Escher Lennon; Choate Hall & Stewart LLP, Robert S. Frank Jr.; Seyfarth Shaw LLP, Camille A. Olson

**Defense lawyers:** Boies, Schiller & Flexner LLP, Karen L. Dunn, William A. Isaacson; Latham & Watkins LLP, Sadik Huseny, Sarah M. Ray



Alexander Drecun / Special to the Daily Journal

GIBSON, DUNN & CRUTCHER LLP PARTNER JEFFREY T. THOMAS.

How exactly does one ask a jury for \$3 billion?

For Gibson, Dunn & Crutcher LLP partner Jeffrey T. Thomas, the trick was contextualizing the amount within a megabucks industry, as well as being frank with jurors. The approach worked, and earned Thomas and his team the highest verdict in California during 2016.

"We told 'em, 'We get it, it's a huge amount of money,'" Thomas said. "But this was a contract case between two companies with a huge number of customers that rely on their relationship."

Representing Hewlett-Packard Co., Thomas argued Oracle Corp. breached a contract that stated, in part, that Oracle would continue offering software to run on HP's Itanium servers for as long as HP wanted.

The trial was the second in a prolonged legal battle that began in 2012. In the first trial, HP established the legitimacy of the contract, and what it required. Thomas convinced jurors last year that Oracle breached the contract when it issued a late night press release — the day before HP's shareholder meeting — announcing new versions of its software would not run on Itanium.

"It was crucial for jurors to understand that these customers buy mission critical servers that they need to be able to rely on for 10 years," Thomas said. "With our lives being so connected today, people were halfway there to understanding it. We described how these servers process airline reservations, ATM systems and hospital records."

According to Thomas, an important theme at trial was why Oracle released the statement. While Oracle's attorneys argued HP's servers had become outdated, Thomas showed internal Oracle documents that suggested otherwise.

Larry Ellison, Oracle's CEO, testified at the trial, and Thomas believes Ellison made a key mistake while doing so.

"I was surprised when he said he didn't think the release would cause HP to lose server customers to Oracle Sun," Thomas said. "When he did, I pointed it out on cross, and again in closing. Had I been his lawyer, I would have told him not to

say that."

Thomas said he was also happy when Boies, Schiller & Flexner LLP partner Karen L. Dunn, arguing for Oracle, used her opening statement to downplay her client's actions as nothing more than the publication of a simple press release.

"The facts showed there was a huge marketing campaign in the days after the release," Thomas said. At trial, he told jurors Oracle had contacted many of HP's top 500 customers within eight days of the release.

How convincing was Thomas? Well, after six years of legal wrangling, a five-week trial and untold millions invested in legal strategy by two tech titans, jurors took five hours to return a verdict for HP. Jurors also rejected a counterclaim under the Lanham Act brought by Oracle.

"It was a 100 percent victory," Thomas said.

The case is currently in the midst of post-trial motions. Oracle has vowed to appeal.

— Phil Johnson