

Daily Journal

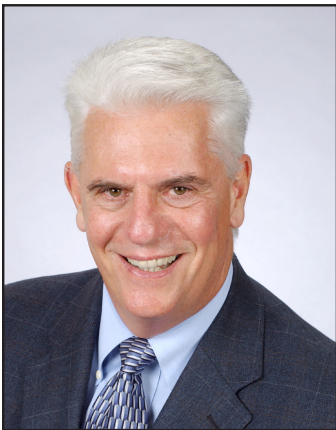
COVER STORY

JANUARY 19, 2011

TOP VERDICTS OF 2010

Top Plaintiffs' Verdicts | by Dollar

DIRECTV, Inc. v. Confidential Vendor/ **\$75 million**



Frederick McKnight



Michael S. McCauley



Geoffrey P. Forgione



Corey Johanningmeier

For Michael S. McCauley, who represented DIRECTV in a two-week arbitration against a third-party vendor, it all came down to the credibility of two key contract negotiators.

"Their testimony was consistent and persuasive on some very difficult contract issues," he said. "Our witnesses really carried the day."

At the heart of the dispute were two patent infringement suits filed against DIRECTV by two third parties related to technology used in its satellite television set-top boxes.

After DIRECTV defended and settled those two cases, it initiated an arbitration against one of its vendors, which is where it got sticky.

DIRECTV had entered into a license agreement with the vendor that included an indemnification obligation for certain third-party infringement lawsuits against DIRECTV.

The company sought about \$30 million in indemnification for amounts incurred in those two suits. But the vendor denied responsibility and counterclaimed for about \$45 million in alleged unpaid license fees.

According to McCauley, one of the keys to winning the case was convincing the panel DIRECTV was entitled to indemnification for one of the two infringement suits filed years before the agreement was signed.

The vendor argued the indemnification covered only lawsuits filed during the term of the agreement.

"We believe that it should have been covered, despite that it had been filed years earlier," McCauley said.

The arbitrators agreed and unanimously ruled in favor of DIRECTV on all of its claims, awarding it about \$30 million in damages and denying the vendor's counterclaims.

Breach of Contract

American Arbitration Association
Los Angeles
Panel: Fern M. Smith, Dickran Tevrizian, Lois W. Abraham

Plaintiff's attorneys: Jones Day, Frederick McKnight, Michael S. McCauley, Geoffrey P. Forgione, Corey Johanningmeier, Alessandra Stewart in Los Angeles

Defendant's attorneys: Paul, Hastings, Janofsky & Walker, Jeff G. Randall in Palo Alto

"There was no splitting of the baby as sometimes happens in arbitrations," McCauley said.

— Pat Broderick