

VERDICTS & SETTLEMENTS

California scheming nets \$388 million

By Nora Lockwood Toher
Staff writer

In the state's largest verdict to an individual, a Nevada jury has awarded \$388 million to a 70-year-old inventor who claims he was hounded by California tax authorities for the past 15 years.

Gilbert P. Hyatt, an electrical engineer with more than 70 patents, was unanimously awarded \$138.1 million in compensatory damages last month when a Las Vegas jury found the Franchise Tax Board of California liable for fraud, intentional infliction of emotional distress, abuse of process, breach of a confidential relationship and invasion of privacy.

The compensatory damages include \$85 million for emotional distress, \$52 million for invasion of privacy and \$1.1 million in attorney fees and prejudgment interest.

Eight days later, the jury voted seven to one to add \$250 million in punitive damages, after finding the tax agency acted with oppression, fraud or malice.

The verdicts capped a four-month trial which pitted the outspoken inventor against California authorities who claimed Hyatt owed \$51 million in income tax and fraud penalties for 1991 and part of 1992.

Lead plaintiff's counsel Mark A. Hutchison compared the verdict with "the shot heard round the world at Lexington and Concord," in its rebuke of abusive tax agencies.

"Government agencies should pause and reflect on the significance of this verdict," he said.

"This was an unusual case because Mr. Hyatt had the resources and energy and drive to fight a huge government agency, and won," Hutchison added. "The lesson there is that if government engages in misconduct and you have a motivated client you can win."

The trial itself was actually 10 years in the making.

Hyatt's 1991 California income tax return stated that he had moved to Nevada in October 1991, shortly before he began receiving millions of dollars in licensing fees from his inventions, including a microprocessor patent he received in 1990.

The California tax board determined that he was a California resident until April 1992, and assessed taxes for 1991 and part of 1992, along with substantial civil fraud penalties totaling \$51 million.

Hyatt filed suit in Nevada in 1998 against the tax board, accusing tax auditors of fraud and negligence. California law gives the state tax board immunity from such suits, but the Nevada Supreme Court refused to honor California law and permitted the suit to proceed.

The case went up to the U.S. Supreme Court, which in 2003 ruled 9-0 that the Constitution does not require to Nevada to give full faith and credit to California's statutes by providing its tax agency with immunity from lawsuits.

Franchise Tax Board of

censing program, and they decided they wanted a piece of that," Hutchison said. "They decided they were going to concoct an audit."

Hyatt claimed that Sheila Cox, an overzealous California tax agent, invaded his privacy by going through trash and his mailbox in Nevada and disclosing his Social Security and credit card information to third parties.

In his opinion, Hutchison said, the California tax board was under pressure to increase revenues to help alleviate the state's financial crisis.

"What you deduce," Hutchison said, "is that they were trying to pressure him by disclosing his confidential information."

Cox's efforts to pursue California's tax claim against Hyatt were "extraordinary



California v. Hyatt, 538 U.S. 488

Patricia Lundvall, a Nevada attorney who represented the California tax board, did not return a phone call seeking comment.

John Barrett, spokesman for the California tax board, said the board is reviewing the verdict and has not decided whether to appeal.

Trash-picking tax agents

During the trial, officials from the California tax agency argued that they were merely trying to collect unpaid taxes from Hyatt.

But the plaintiffs' team introduced evidence that tax officials overstepped their authority with their aggressive collection efforts.

"Mr. Hyatt had been paid hundreds of millions of dollars for a very successful li-

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— Mark A. Hutchison

and offensive," Hutchison said.

During a videotaped deposition shown at the trial, one of Cox's co-workers testified that Cox had vowed "to get that Jew bastard." Cox also allegedly gossiped to co-workers about Hyatt, discussing details about a woman who was supposedly his girlfriend, as well as the murder of his son.

Cox denied the allegations, and maintained that she was merely doing her job.

But Hyatt contended that tax auditors ignored information that supported his position, and instead relied heavily on information from "untrustworthy witnesses," including his ex-wife and disgruntled relatives.

"When Mr. Hyatt came into this wealth, his relatives wanted to get a piece," Hutchison said.

Discovery a 10-year siege

Before the trial, there were at least 40 discovery hearings. Hutchison said California authorities "fought Mr. Hyatt every step of the way on the documents he was requesting, information he was seeking, witnesses he wanted to depose."

Co-counsel for the plaintiff, Peter Bernhard, sifted through thousands of pages of documents to select evidence that was displayed on a six-foot video screen during the trial.

Hutchison said that during discovery they found tax board documents saying the penalties being imposed on Hyatt were un-

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warranted. But the tax agents continue to go after him. Those documents, along with all other documents in the case, have been sealed by judicial order since the suit was filed in 1998.

There was also evidence the agency used information selectively to confirm its contention that Hyatt was a California resident for six months after he claimed he moved to Nevada.

For example, Hutchison said, the tax board used Hyatt's medical records as evidence that he was a California resident, but never bothered to determine if he had been a longtime patient of the physicians he continued to see in California.

"They just said, 'That's a California contact,'" Hutchison said.

Nine days on the stand

The most important part of the trial, however, was Hyatt's testimony, Hutchison said.

Jurors "had to see if they believed him," the attorney explained.

Hyatt testified for nine days, and "came across as very sincere," Hutchison said. "This is a guy who appeared to be a law-abiding citizen, and didn't come across as a tax cheat and a fraud. This guy was a straight-shooter and not what the FTB portrayed him to be."

Cox and her supervisor were the main defense witnesses. Although they denied Hyatt's allegations, the evidence made it clear the tax agency violated Hyatt's rights, Hutchison said.

"They were going to get money from Gil Hyatt one way or the other," he said.

During his closing argument, Hutchison told jurors to review the evidence and decide whether the tax board was, as it claimed, merely doing its job, or whether it violated Hyatt's privacy and abused its authority.

"The FTB wanted to focus on Gil Hyatt and make him out to be a villain. We said, 'Look at the FTB's conduct,'" said Hutchison. "We went through and catalogued 20 or 30 outrageous acts and instances of misconduct and fraudulent, intentional conduct by the FTB."

Jurors deliberated five days on liability and compensatory damages, and one day on punitive damages.

Litigation in the tax proceeding continues separately in California to determine whether Hyatt actually owes back taxes.

Plaintiff's attorneys: Mark A. Hutchison of Hutchison & Steffen in Las Vegas; Peter Bernhard of Bullivant Houser Bailey in Las Vegas; Donald J. Kula of Perkins Coie in Los Angeles.

Defense attorney: Patricia Lundvall of McDonald, Carano, Wilson in Reno, Nev.

The case: *Hyatt v. Franchise Tax Board of California*, Aug. 6, 2008 compensatory award, Aug. 14, 2008 punitive award; 8th Judicial District Court, Clark County Courts, Nev.; Judge Jesse Walsh.

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