TOP 100 Verdicts of 2006

Rank	Amount	Type	Name/Court/Date	Lead Plaintiff's Attorney(s)/Firm	Lead Defense Attorney(s)/Firm
2	$699,535,037	Contract	**Gulsby Engineering v. Gulf Liquids New River Project** Harris Co., Texas, Dist. Ct. 8/2/2006	**Don Jackson,** Ware, Jackson, Lee & Chambers, Houston, TX **Jeffrey W. Chambers,** Ware, Jackson, Lee & Chambers, Houston, TX **Dennis Barrow,** Ware, Jackson, Lee & Chambers, Houston, TX	**Barry Abrams** and **Robert P. Scott,** Abrams, Scott & Bickley, Houston

VERDICTSEARCH
ALM

CONTRACT

Breach of Contract — Fraud — Fraudulent Inducement

Engineering co. claimed gas plant stopped payments

VERDICT **$699,535,037**

CASE Gulsby Engineering, National American Insurance Co., Bay Ltd., Gulsby-Bay Plant Partners, American Home Assurance Co. v. Gulf Liquids New River Project LLC and Williams Energy Marketing and Trading Co., No. 2001-48088

COURT Harris County District Court, 215th, TX

JUDGE Levi Benton

DATE 8/2/2006

PLAINTIFF ATTORNEY(S)
Don Jackson (co-lead), Ware, Jackson, Lee & Chambers, Houston, TX (Bay Ltd.)
Jeffrey W. Chambers (co-lead), Ware, Jackson, Lee & Chambers, Houston, TX (Bay Ltd.)
Dennis Barrow, Ware, Jackson, Lee & Chambers, Houston, TX (Bay Ltd.)
Ricardo R. Reyna (co-lead), Brock Person Guerra Reyna, San Antonio, TX (Gulsby Engineering, National American Insurance Co.)
William K. Andrews, Andrews, Myers, Coulter & Cohen, Houston, TX (Gulsby-Bay Plant Partners)
Stephen C. Carlin (co-lead), Greenberg Traurig LLP, Dallas, TX (National American Insurance Co.)
Keith Langley (co-lead), Godwin, Pappas, Langley & Ronquillo LLP, Dallas, TX (American Home Assurance Co.)
William W. Davidson, Andrews, Myers, Coulter & Cohen, Houston, TX (Gulsby-Bay Plant Partners)
Russell J. DePalma, Greenberg Traurig LLP, Dallas, TX (National American Insurance Co.)
Christopher LaVigne, Greenberg Traurig LLP, Dallas, TX (National American Insurance Co.)
Jorge A. Tuckler, Brock Person Guerra Reyna, San Antonio, TX (Gulsby Engineering)
Oscar Zevallos, Godwin, Pappas, Langley & Ronquillo LLP, Dallas, TX (American Home Assurance Co.)

DEFENSE ATTORNEY(S)
Barry Abrams, Abrams, Scott & Bickley, Houston, TX (Gulf Liquids New River Project LLC)
Robert P. Scott, Abrams, Scott & Bickley, Houston, TX (Gulf Liquids New River Project LLC)
Jack W. Higdon, Abrams, Scott & Bickley, Houston, TX (Gulf Liquids New River Project LLC)
Anton J. Rupert, Crowe & Dunlevy, Oklahoma City, OK (Williams Energy Marketing and Trading Co.)

FACTS & ALLEGATIONS In October 1999, plaintiff Gulsby Engineering was hired by Gulf Liquids New River Project LLC to design and build two gas processing plants in Louisiana. In early 2001, Gulsby entered into a partnership with plaintiff Bay Ltd. to form plaintiff Gulsby-Bay Plant Partners, which Gulf Liquids then hired to design and build two additional gas processing plants, also in Louisiana.

The payment and performance surety company for the first two plants was plaintiff National American Insurance Co. For the second two plants, it was plaintiff American Home Assurance Co.

Gulf Liquids had a contract with Williams Energy Marketing & Trading. Under that contract, Williams had a right to project management control on the first two plants, including payments to Gulsby. The plaintiffs claimed they didn't know about this contract.

By May 2001, according to Gulsby, Gulf Liquids was more than $20 million behind in payments on the first two plants. At that point, National American stepped in as a payment surety and started paying subcontractors.

During summer 2001, Gulf Liquids stopped making payments to

Gulsby altogether, claiming that Gulsby's work was incomplete and defective. Gulf Liquids also stopped paying Gulsby-Bay. That September, with work still underway on the second plants, Gulf Liquids terminated Gulsby and Gulsby-Bay and demanded that the performance bonds be honored. The sureties said that since Gulf Liquids had defaulted on several obligations, including its payments to Gulsby and Gulsby-Bay, they weren't going to honor the performance bonds.

Gulsby, National American, Bay Ltd., Gulsby-Bay and American Home sued Gulf Liquids New River Project LLC and Williams Energy Marketing and Trading Co., alleging fraud, fraudulent inducement, breach of contract, intentional interference with contracts and civil conspiracy.

The plaintiffs claimed that when the defendants fell behind in their payments in late 2000 and early 2001, they promised the plaintiffs that the debt would be made up on future projects.

Gulsby and National American also claimed that Gulf Liquids made several misrepresentations before they entered into the contracts. According to those plaintiffs, Gulf Liquids overstated the amount of land leased for plant construction, which dramatically increased the project costs; radically misstated the type of gas it would be processing, which affected how the plant would operate; and failed to disclose that it had insufficient funds to pay for change orders. Gulsby and National American said they would not have agreed to do the work if they had known those facts or that Williams was involved in the projects.

Originally, Gulsby was going to be the contractor for the second two plants, but it was unable to secure bonding for the full amounts of the contracts and, instead, entered into a joint venture with Bay Ltd., said Bay Ltd.'s attorneys. The plaintiffs claimed that, in forming Gulsby-Bay, they relied in part on Gulf Liquids' promise of hundreds of millions of dollars in future projects.

The plaintiffs alleged that, on the second two plants, the defendants significantly delayed approval of engineering plans and change requests, stopped making payments even though substantial work was being performed, and induced Gulsby-Bay to work for two months without payment.

The defendants denied the allegations and counterclaimed on the grounds that the first two plants were incomplete and defective and that Gulsby-Bay was in breach of contract on the second two plants.

The defendants also claimed that Gulsby was in terrible financial condition and was misappropriating money from the Gulf Liquids projects and from Gulsby's own partners to cover unrelated business losses.

The plaintiffs contended that the plants were complete and not defective. Gulsby has constructed more than 150 similar plants throughout the Southwest and around the world.

Before the trial, the defendants won an arbitration against their insurance carrier, convincing a three-judge arbitration panel that Gulsby's and Gulsby-Bay's work was defective. Gulf Liquids' and Williams' witnesses at arbitration were essentially the same as in this trial. The plaintiffs in this case were not parties to the arbitration.

INJURIES/DAMAGES The four contracts for construction of the four plants totaled about $75 million, not including change orders. Gulsby claimed that in 2000 and 2001 it performed tens of millions of dollars in additional work pursuant to 89 change orders, not knowing that the defendants had insufficient funds to pay them.

During summer 2001, the defendants stopped paying Gulsby-Bay. Bay Ltd. said that it therefore had to inject millions of its own dollars into Gulsby-Bay to make sure subcontractors were paid for work on the second two plants.

By September 2001, Gulsby was out of business, National American had paid tens of millions pursuant to the payment bonds, and Gulf Liquids had failed to make several milestone payments to Gulsby-Bay, according to the plaintiffs' attorneys.

Gulsby, National American, Gulsby-Bay and Bay sought actual and punitive damages. For punitive damages, the plaintiffs sought at least $50 million from Gulf Liquids, which was the amount for which Gulf Liquids sold the plants several years after completion, said Gulsby's attorneys. From Williams, they sought at least $150 million in punitive damages, which was the amount Gulsby claimed Williams withheld, which was why Gulsby went out of business.

American Home sought a finding that the second two contracts were amended without its consent. It did not seek actual or punitive damages, but said that, in the event it won on liability, it would seek a declaratory judgment and attorney fees from the court after the trial concluded.

Williams' net worth was $500 million, and it had assets of $15 billion, said the plaintiffs' attorneys.

Gulf Liquids claimed that its net worth was negative.

On the counterclaim, the defendants claimed that Gulsby charged $25 million for defective work on the first two plants and that the repairs also cost millions. Regarding the second two plants, the defendants sought more than $12 million for excess completion costs from Gulsby-Bay, plus more than $50 million in delay damages and refinancing costs.

Gulsby and Gulsby-Bay disputed these amounts and denied liability.

RESULT The jury found that Gulf Liquids breached its contracts with the plaintiffs and found fraud, fraudulent inducement, intentional interference and conspiracy by both defendants. The jury also found that the contracts for the second two plants were amended without American Home's consent. The jury charge included 75 questions on liability, not including six comparative fault questions.

To Gulsby, the jury awarded a total of $158,770,923. The jury apportioned responsibility for the fraud damages 50 percent to Gulf Liquids, 40 percent to Williams and 10 percent to Gulsby, and for damages for the intentional interference count, 80 percent to Williams and 20 percent to Gulsby.

To National American, the jury awarded a total of $211,277,486. The jury apportioned responsibility for the fraud and fraudulent inducement damages 50 percent to Gulf Liquids, 40 percent to Williams and 10 percent to National American, and for the intentional interference damages 100 percent to Williams and none to National American.

To Gulsby-Bay, the jury awarded a total of $116,150,628. The jury apportioned responsibility for the fraud and fraudulent inducement damages 50 percent to Gulf Liquids, 50 percent to Williams and none to Gulsby-Bay.

To Bay Ltd., the jury awarded a total of $213,336,000. The jury apportioned responsibility for the fraud and fraudulent inducement damages 50 percent to Gulf Liquids, 50 percent to Williams and none to Bay.

Without considering any election of remedies or comparative fault, the actual damages in the verdict were $374,535,037, and the punitive damages were $325 million.

Lead counsel for plaintiffs, Ricardo Reyna, said that, with a few very minor exceptions, the jury awarded the plaintiffs what they asked for at trial.

BAY LTD.
$64,168,000 Gulf Liquids and Williams' fraudulent inducement
$32,084,000 Gulf Liquids' fraud
$32,084,000 Williams' fraud
$25,000,000 punitives against Gulf Liquids
<u>$60,000,000 punitives against Williams</u>
$213,336,000

GULSBY ENGINEERING
$7,746,077 value of Gulsby's compensable work outside scope of contracts
$29,958,118 Gulf Liquid's breach of contract on first two plants
$9,016,682 Gulf Liquid's fraud
$9,016,682 Gulf Liquid's fraudulent inducement
$9,016,682 Williams' fraud
$9,016,682 Williams' intentional interference
$25,000,000 punitives against Gulf Liquids
<u>$60,000,000 punitives against Williams</u>
$158,770,923

GULSBY-BAY PLANT PARTNERS
$4,360,155 Gulf Liquids breach of the contracts on the second two plants
$1,349,853 difference between the costs of an payments to Gulsby-Bay on those contracts
$6,360,155 Gulf Liquids' fraud
$6,360,155 Gulf Liqids' fraudulent inducement
$6,360,155 Williams' fraud
$6,360,155 Williams' fraudulent inducement
$25,000,000 punitives against Gulf Liquids
<u>$60,000,000 punitives against Williams</u>
$116,150,628

NATIONAL AMERICAN INSURANCE CO.
$20,182,498 Gulf Liquids' amendment of the contacts on the first two plants without National American's consent
$20,182,498 Gulf Liquid's breach of the payment bond
$20,182,498 Gulf Liquid's fraud
$20,182,498 Gulf Liquids' fraudulent inducement
$20,182,498 Williams' fraud
$20,182,498 Williams' fraudulent inducement
$20,182,498 Williams' intentional interference
$20,000,000 punitives against Gulf Liquids
<u>$50,000,000 punitives against Williams</u>
$211,277,486

TRIAL DETAILS
Trial Length: 5 months
Trial Deliberations: 5 days
Jury Vote: 10-2
Jury Composition: 3 male, 9 female; 6 white, 3 Hispanic, 3 black

PLAINTIFF EXPERT(S)
Frank Adams, mechanical, Houston, TX
Carol Freedenthal, petrochemicals, Houston, TX
Lin Heath, construction cost estimates/analysis, Atlanta, GA
Jeff Spilker, CPA, accounting, Houston, TX
Chris Sullivan, chemical, Houston, TX

DEFENSE EXPERT(S)
Harold Hebert, chemical, Thibodaux, LA
Tommy John, chemical, Houston, TX
Byron Spruell, construction cost estimates/analysis, Chicago, IL

POST-TRIAL Post-trial motions are pending, including on the issues of attorney's fees and election of remedies.

EDITOR'S NOTE This report is based on information provided by plaintiff's counsel. Defense counsel did not respond to phone calls.

The case was pending for five years. Six months before trial, Reyna was brought in as lead counsel for plaintiffs Gulsby and National American. He filed a notice of appearance on the first day of jury selection.

–John Schneider

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