



The Verdicts That Left A Mark In 2018

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Law360 (December 17, 2018, 5:51 PM EST) -- Trial watchers saw plenty of drama in 2018, from the latest mega-million matchup between [Apple](#) and its longtime patent nemesis in Texas to a nationwide series of back-and-forths between [Johnson & Johnson](#) and plaintiffs alleging its baby powder causes cancer, which ultimately led to billions of dollars in damages against the pharmaceutical giant.

Here are a few of the biggest and most interesting verdicts from the year that was.

J&J's Talcum Powder Trials

J&J started facing suits alleging its baby powder causes ovarian cancer in 2016 and 2017, but in 2018 a new theory came to the fore: that the talcum powder contains asbestos and causes the asbestos-signature disease mesothelioma.

On the back of this theory, plaintiffs continued to score big trial verdicts against J&J, none bigger than that awarded by a St. Louis jury in July — \$4.69 billion on the claims brought by 22 women, who combined the two theories and alleged asbestos in the baby powder resulted in their ovarian cancer.

The verdict was not the first one for the plaintiffs in talc litigation, but it was by far the biggest, and the roughly \$213 million awarded per plaintiff would still rank among the largest talc verdicts to be handed down.

The verdict set up the possibility that J&J could face a new wave of trials combining both the asbestos and ovarian cancer theories, creating the risk of even more major verdicts.

J&J, however, wasn't helpless in 2018, scoring wins in a New Jersey trial in October and in California in November. Its attorneys in the New Jersey case from [Weil Gotshal & Manges](#)

LLP chalked up their success to **using more aggressive tactics** than in earlier trials.

The scientific evidence at issue in these cases is still hotly disputed. J&J has pointed to a lack of epidemiological studies showing a connection between its product and mesothelioma and decades of self-testing, while plaintiffs have brought in microscopy experts who say they found asbestos in J&J's products. There was little clarity for the five juries that ended up deadlocking cases over asbestos in talc this year.

The case is *Ingham v. Johnson & Johnson et al.*, case number 1522-CC10417, in the 22nd Judicial Circuit of Missouri.

VirnetX's Latest IP Battle with Apple

The latest round in the long-running intellectual property bout between Apple and patent licensing company VirnetX went to the latter, as a Texas federal jury in April awarded VirnetX \$502.6 million on claims that Apple had infringed four of its network security patents.

The two companies have been grappling for over eight years in two separate suits involving VirnetX's allegations that Apple's iPhones, iPads, iPods and laptops infringe the former company's patents. The suits have encompassed several retrials and Federal Circuit appeals, and last year VirnetX won \$302 million from jurors in a trial over older Apple products. That award was increased to \$439 million with post-trial enhancements and interest.

In this year's trial, jurors found that Apple's FaceTime and VPN-on-demand features infringed VirnetX network security patents.

In September, VirnetX and Apple announced they had agreed to **tack on roughly \$93 million** in interest and costs to this year's verdict.

Yet VirnetX's trial victories against Apple are under a cloud because all four patents have been found invalid in inter partes reviews and reexaminations requested by Apple and others.

Those decisions, along with last year's verdict, are on appeal at the Federal Circuit, which recently scheduled oral arguments for January. Apple in October appealed this year's verdict to that court as well.

The case is *VirnetX Inc. et al. v. Apple Inc.*, case number 6:12-cv-00855, in the U.S. District

Court for the Eastern District of Texas.

First Monsanto Roundup Trial

In a landmark verdict for plaintiffs in toxic tort cases and an alarm bell for Monsanto, a California state jury in August awarded \$289 million to a school groundskeeper who alleged the agricultural giant's weedkillers contributed to his developing lymphoma. The trial was the first time Monsanto had to defend its herbicides in front of a jury.

Following a monthslong trial and three days of deliberations, a unanimous 12-member jury in San Francisco found Monsanto's Roundup and the stronger Ranger Pro herbicides were unsafe and a substantial factor in causing harm to plaintiff DeWayne "Lee" Johnson.

The verdict was reduced by San Francisco County Superior Court Judge Suzanne Bolanos post-trial to \$78 million. The judge cut the punitive damages awarded in the trial — \$250 million — down to the \$39.25 million awarded for compensatory damages, citing the [U.S. Supreme Court's](#) 2003 ruling in [State Farm Mutual Auto Insurance Co. v. Campbell](#) , which held punitive damages are limited by the Fourteenth Amendment.

Johnson [accepted the reduced verdict](#) in October, and even in its reduced form, the verdict has set the stage for a wave of other suits over the weedkiller.

James Heller, chair of [Cozen O'Connor's](#) products liability group, said the verdict could open the door, at least in California state court, to more cases where a sympathetic plaintiff and speculative scientific studies result in huge awards, even though Monsanto had strong scientific opinions backing its arguments.

“Juries are looking at it as a Monday morning quarterback — this guy has cancer, this guy used the product, there are reports that connect them, the manufacturer is fighting upstream,” he said. “It’s almost putting a match to gasoline.”

The key chemical in Roundup, glyphosate, has become one of the most used herbicides worldwide, the jury heard during the trial, and Monsanto's weed killer is at the center of hundreds of other lawsuits heading to trial in multidistrict litigation consolidated before a California federal court.

The case is Johnson v. Monsanto Co. et al., case number CGC16550128, in the Superior Court of

the State of California, County of San Francisco.

Skelos and Silver Convicted — Again

The second time wasn't the charm for two former leaders of the New York Legislature in 2018, as both former [New York State Senate Majority Leader Dean Skelos](#) and former [New York State Assembly Speaker Sheldon Silver](#) were convicted in their separate retrials on graft charges.

Showing that corruption crosses the aisle in Albany, both Skelos, a Republican, and Silver, a Democrat, were convicted on corruption charges in 2015. Both convictions were vacated by the Second Circuit in light of the U.S. Supreme Court's landmark ruling in *U.S. v. McDonnell*, which redefined what constitutes an official act that can support a bribery charge.

This year, federal prosecutors took another swing at both cases and scored a pair of convictions.

In May, Silver was found guilty of all the charges against him, including honest services fraud, extortion and money laundering. The jury deliberated for just under eight hours. Prosecutors had accused him of engaging in a quid pro quo in which he accepted millions of dollars in illicit referral fees from developers and an asbestos disease doctor and took official action on their behalf.

And in July, after deliberating for about three days following an over-two-week trial, a jury convicted Skelos and his son Adam on all eight counts of conspiracy, extortion under color of official right, and soliciting bribes and gratuities.

The pair were accused of using the senator's perch as one of New York state's three most powerful politicians to coerce real estate, environmental consulting and medical malpractice insurance businesses into hiring Adam or directing payments his way.

Silver was sentenced to seven years in prison but **remains free** pending his appeal to Second Circuit, while Skelos and his son, who are also appealing, have to **report to federal custody** by Jan. 8.

Another politician from the tri-state area managed not to go before a jury again in 2018, as federal prosecutors in January decided to drop their corruption case against Sen. Bob Menendez, D-N.J., after a first jury deadlocked last year.

The cases are U.S. v. Skelos et al. and U.S. v. Silver, case numbers 1:15-cr-00317 and 1:15-cr-00093, respectively, both in the U.S. District Court for the Southern District of New York.

Losses for the EEOC on Trans Workers

In a year that saw President Donald Trump's administration push anti-transgender measures, the [U.S. Equal Employment Opportunity Commission](#) went to bat in the courts to protect transgender rights but lost two high-profile trials on the matter.

In May, an Illinois federal jury **sided against the federal agency** and found that [Rent-A-Center East Inc.](#) didn't illegally fire a transgender employee after she told the company she was transitioning.

The eight-person jury answered "no" to the question of whether plaintiff Megan Kerr's transgender status was a motivating factor in Rent-A-Center's decision to fire her, siding with the company, which had contended Kerr was fired because she got caught improperly using a delivery vehicle for personal use.

And in October, a California federal jury cleared educational technology company IXL Learning Inc. of the EEOC's allegations that its CEO wrongly fired a transgender man for posting a Glassdoor review accusing the Silicon Valley company of discrimination.

After less than three hours of deliberations following a weeklong trial in San Francisco, an eight-member jury **unanimously found** that IXL Learning did not violate Title VII of the Civil Rights Act and the Americans with Disabilities Act when its CEO fired Adrian Scott Duane, a transgender man, for posting an anonymous two-star review of the San Mateo, California-based company on the job review website Glassdoor.

With the Trump administration embracing a narrow definition of "sex" for the U.S. departments of Education and Health and Human Services, which some state attorneys general say would write transgender Americans out of existence, the independent EEOC's ability and efforts to prevent discrimination based on gender identity may take center stage.

The cases are U.S. Equal Employment Opportunity Commission v. IXL Learning Inc., case number 3:17-cv-02979, in the U.S. District Court for the Northern District of California and U.S. Equal Employment Opportunity Commission v. Rent-A-Center East Inc., case number 2:16-cv-02222, in the U.S. District Court for the Central District of Illinois.

HouseCanary's \$706 Million Trade Secrets Win

In March, a Texas state jury slammed real estate technology company Amrock, then called [Title Source Inc.](#), with a \$706.2 million verdict, finding it had ripped off trade secrets from a former collaborator, data-analytics startup HouseCanary.

The unanimous 12-member Bexar County jury included more than \$400 million in exemplary damages, finding Title Source brazenly stole proprietary data recipes for home appraisals and comparisons as it allegedly readied to build its own software suite.

Amrock has fired back post-trial that the verdict was based on fraud, saying that after the trial, three whistleblowers — all former HouseCanary executives — came forward and told it about the alleged scheme that was perpetrated to mislead the jury in the trade secrets lawsuit.

Amrock argued it had evidence that HouseCanary had “colluded” with Amrock's main witness, its former vice president and chief appraiser Jordan Petkovski, and that the trial winner never had any proprietary technology in the first place.

Randy Mastro of [Gibson Dunn & Crutcher LLP](#), who represents Amrock, told Law360 in November that what happened in this case is “shocking, egregious” and unlike anything he's seen in 35 years of practicing law.

[Lewis Roca Rothgerber Christie LLP](#) partner Stuart Bartow said the case is drawing attention because of the “heightened and visceral” accusations coming from both sides. Bartow noted that trade secrets cases can often be very emotional, but he said this case is a step beyond.

“Everybody's accusing everybody of lying and basically committing fraud on the court,” he said.

A hearing on Amrock's motions for a new trial or to reduce the damages to roughly \$2 million is scheduled for Dec. 17 through 20.

The case is Title Source Inc. v. HouseCanary Inc., case number 2016-CI-06300, in the 73rd District Court in Bexar County, Texas.

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