

THE TOP 100

VERDICTS OF 2012

Every year, *The National Law Journal's* VerdictSearch affiliate scours the nation's court records in search of the largest verdicts; it also consults with practitioners and with additional ALM Media LLC publications. The key here is what the jury awarded; this list does not account for judicial reductions, offsets or appeals.

RANK	AMOUNT	TYPE	NAME/COURT/DATE	LEAD PLAINTIFFS' ATTORNEY(S)/FIRM(S)	LEAD DEFENSE ATTORNEY(S)/FIRM(S)
21	\$133,899,391	Intellectual property	USA Power LLC v. PacifiCorp, Salt Lake Co., Utah, Dist. Ct., 050903412, 4/21/2012	James E. Magleby and Peggy A. Tomsic, Magleby & Greenwood, Salt Lake City	P. Bruce Badger, Fabian Law, Salt Lake City; Thomas R. Karrenberg, Anderson & Karrenberg, Salt Lake City

Utility: Defendants breached contract, stole trade secrets

VERDICT \$133,899,391

CASE USA Power LLC v. PacifiCorp, Salt Lake Co., Utah, Dist. Ct., 050903412, 4/21/2012

COURT Third District Court, Salt Lake County, UT

JUDGE Anthony B. Quinn

DATE 5/21/2012

PLAINTIFF

ATTORNEY(S) James E. Magleby and Peggy A. Tomsic, Magleby & Greenwood, Salt Lake City

DEFENSE

ATTORNEY(S) P. Bruce Badger, Fabian Law, Salt Lake City; Thomas R. Karrenberg, Anderson & Karrenberg, Salt Lake City

FACTS & ALLEGATIONS In 2001, plaintiff USA Power LLC undertook development of a project concept that was to become the 525 MW Spring Canyon facility in Mona. The project when completed would provide a long-term source of power for the underserved electricity market of the western United States.

In April 2001, USA Power retained attorney Jody Williams (a partner in the Kruse Landa Maycock & Ricks LLC law firm, of Salt Lake City), who had an expertise in water rights.

USA Power claimed in its second amended complaint that among other matters, the retainer agreement expressly recognized that Williams would “advise about business strategies” relevant to her new client, and that Williams represented the plaintiffs with regard to the development of the Spring Canyon project.

In August 2002, midway through her representation of USA Power, Williams left Kruse Landa and joined Holmes, Roberts and Owens LLP (HRO), of Salt Lake City, as a partner.

According to USA Power, she informed the company of her move, and USA Power consented to her continued legal representation of USA Power. She did not state or suggest that her change in law firms would in any way lessen or compromise her lawyer’s duty of loyalty and confidentiality to USA Power or Spring Canyon, or that the scope of her representation was limited in any way.

Prior to Williams’ joining HRO, another HRO attorney, Blaine Rawson, had represented USA Power in its application to receive an air permit for Spring Canyon. From August 2002 onward, Williams and HRO were USA Power’s attorney relative to Spring Canyon. Williams and HRO billed and collected legal fees from USA Power for their legal services through October 2003.

In mid-August 2002, PacifiCorp (a Portland, Ore.-based utility company that provides electricity for 650,000 retail customers in Utah) contacted USA Power to discuss Spring Canyon. PacifiCorp was actively seeking new sources of power generation capable of providing service to its “Eastern Control Area,” which included all of its Utah retail customers.

On Sept. 11, 2002, USA Power and PacifiCorp executed a confidentiality agreement that required that all confidential information disclosed by or on behalf of USA Power to PacifiCorp relative to the parties’ discussions and negotiations regarding Spring Canyon be kept confidential. The agreement further prohibited PacifiCorp from using or disclosing such information for its own benefit. PacifiCorp’s execution of the confidentiality agreement was a precondition to USA Power providing PacifiCorp with any confidential information about Spring Canyon.

USA Power claimed that from September 2002 to March 2003, it provided PacifiCorp with detailed confidential information regarding its development of the Spring Canyon project, both in discussions and written material. USA Power further claimed that, in March 2003, PacifiCorp agreed to purchase the Spring Canyon project for \$3 million and a joint development agreement with USA Power LLC, but then reneged on the agreement when it was set to close. At that time, PacifiCorp told USA Power that it had decided to issue a request for proposal (RFP) for bids from third parties to provide the power it needed through a long-term power purchase agreement (PPA), but that the RFP was USA Power’s to lose because Spring Canyon was the only development in a position to meet the 2005 deadline to be online. USA Power submitted four bids, two of which were short-listed for further discussions and consideration as the winning RFP. A final meeting was held on Oct. 16, 2003, between USA Power and PacifiCorp to discuss a long-term PPA. USA Power claimed that unbeknownst to it, the discussion was a “sham,” as PacifiCorp’s board of directors had already voted in early September to award the RFP to PacifiCorp’s “self-build” Spring Canyon-clone bid.

On Nov. 3, 2003, PacifiCorp announced that its self-build proposal named “Currant Creek” had won the RFP. The new plant would be built in Mona, a half-mile from the Spring Canyon site, and as alleged by USA Power, was virtually identical to the Spring Canyon project. USA Power alleged that it was ranked second among all third-party bidders behind the Currant Creek clone.

According to USA Power, on the same date that PacifiCorp “won” its own RFP, the USA Power principals discovered that Williams and HRO were representing PacifiCorp in connection with PacifiCorp’s development of Currant Creek. USA Power alleged that Williams and her firm had begun negotiating for water rights -- an essential element -- for the Currant Creek project in the spring of 2003, while Williams was still representing and billing USA Power for representing it on the Spring Canyon project. Moreover, she was instrumental in PacifiCorp’s finalizing that transaction and having it approved by the State of Utah, according to USA Power.

USA Power claimed that prior to this time, PacifiCorp had both actual and constructive knowledge that Williams was representing Spring Canyon, as her name and work product were prominent in the “confidential” information given to PacifiCorp during the 2002-03 Spring Canyon negotiations.

BREACH OF CONTRACT — INTELLECTUAL PROPERTY — TRADE SECRETS — INTELLECTUAL PROPERTY — MISAPPROPRIATION OF TRADE SECRETS — CORPORATIONS — BREACH OF FIDUCIARY DUTY — BUSINESS LAW — INTENTIONAL INTERFERENCE WITH A CONTRACT — BUSINESS LAW — BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

USA Power, as well as its subsidiaries (USA Power Partners LLC and Spring Canyon Energy LLC), sued PacifiCorp for alleged violation of the Uniform Trade Secrets Act, breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, and intentional interference with existing contractual relations. USA Power also sued Williams and Holme, Roberts & Owen for alleged breach of fiduciary duty and breach of duty of confidentiality. The district court granted summary judgment for the defendants on all those claims, but the Utah Supreme Court reversed the district court and remanded the case for a jury trial on USA Power’s claims of trade-secret misappropriation, breach of contract and breaches of fiduciary duty, the claims on which USA Power affirmatively sought reversal of the summary judgment order.

At trial, counsel for USA Power argued that PacifiCorp obtained confidential information regarding Spring Canyon from USA Power with a duty not to use or disclose such information, but then converted the information for its own use in developing a competing generation project on a neighboring site with the same concept and design. As a result of this conversion, USA Power alleged, PacifiCorp both unjustly enriched itself and harmed USA Power. Attorney Williams was retained by USA Power to represent it for purposes of the Spring Canyon project. Without advising her client or obtaining its informed consent, she began representing PacifiCorp on matters directly adverse to USA Power’s interest, thereby facilitating the transfer and use of confidential information and breaching her duty of loyalty to her client USA Power and damaging USA Power, asserted USA Power.

Counsel for PacifiCorp argued that the information USA Power provided to PacifiCorp was not confidential and was not a trade secret, that PacifiCorp did not use the information provided by USA Power to develop Currant Creek, and that USA Power would not have won the RFP absent Currant Creek.

Counsel for Williams/HRO argued that Williams and HRO were not representing USA Power when they began representing PacifiCorp on the Currant Creek project, that their representation of PacifiCorp was not directly adverse to their representation of USA Power (either as a former or concurrent client), and that no action of Williams or HRO caused USA Power to suffer any damage or injury. Moreover, they argued that the Currant Creek project was nearly identical to several other power plants in the West built since 2000, the details of which were fully known and commonly used in the power industry.

INJURIES/DAMAGES The plaintiffs sought amounts of \$21,399,991 in damages for PacifiCorp’s alleged misappropriation of USA Power’s trade secret, \$112,500 for PacifiCorp’s alleged unjust enrichment, \$21,399,391 for PacifiCorp’s alleged breach of contract, and \$21,399,391 for Williams/HRO’s alleged breach of fiduciary duty.

The defendants maintained that the alleged damage USA Power claimed was speculative.

RESULT The jury found that PacifiCorp misappropriated a trade secret possessed by USA Power. Jurors determined that the plaintiffs proved by clear and convincing evidence that PacifiCorp’s trade secret misappropriation was willful and malicious. According to the jury, PacifiCorp breached the confidentiality and non-disclosure agreement, and Williams/HRO breached fiduciary duties that they owed to USA Power as USA Power’s lawyers. The jury determined that the plaintiffs’ damages totaled \$133,899,391.

PLAINTIFFS \$112,500,000 against PacifiCorp for its alleged unjust enrichment
\$21,399,391 damages against PacifiCorp and Williams/Holme, Roberts & Owen
 \$133,899,391

TRIAL DETAILS Trial Length: 5 weeks
 Trial Deliberations: 4 hours
 Jury Vote: 8-0

PLAINTIFF EXPERT(S) **J. Robert Malko**, economics, Logan, UT
R. Ross McCausland, energy, Amarillo, TX
Wayne C. Micheletti, water distribution, Charlottesville, VA
John K. Morris, attorney responsibility, Salt Lake City, UT

DEFENSE EXPERT(S) **Steven E. Clyde**, attorney responsibility, Salt Lake City, UT
Thomas D. Morgan, attorney responsibility, Washington, DC
John J. Reed, economics, Marlborough, MA

POST-TRIAL The plaintiffs filed a motion for exemplary damages against PacifiCorp based on the jury’s finding that plaintiffs proved, by clear and convincing evidence, that PacifiCorp’s misappropriation of plaintiffs’ trade secret was willful and malicious. The plaintiffs also motioned for attorney fees and costs against PacifiCorp based on the jury’s finding that PacifiCorp’s trade-secret misappropriation was willful and malicious, and against Williams/HRO based on the jury’s finding that those defendants breached their fiduciary duties to the plaintiffs. The defendants filed motions for a new trial and a motion for judgment notwithstanding the verdict.

EDITOR’S NOTE This report is based on court documents and information that was provided by counsel for the plaintiffs and Williams/HRO. Counsel for PacifiCorp did not respond to the reporter’s phone calls.

–Aaron Jenkins