

Daily Journal

February 12, 2014

TOP VERDICTS OF 2013

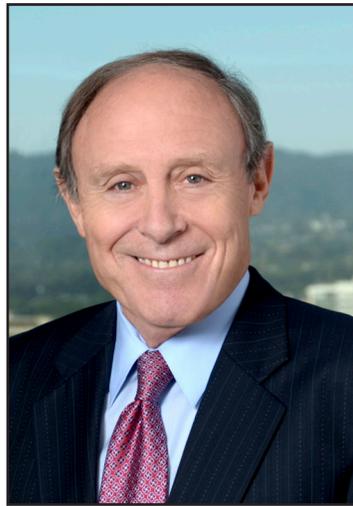
TOP DEFENSE RESULTS

Moser v. Encore Capital Group et al.

After two separate trials, defense lawyers for Encore Capital Group were able to beat back allegations the company had breached a confidentiality agreement with its former general counsel.

The general counsel, Timothy Moser, had negotiated a buyout in order to leave Encore after being involved in whistleblower activities. He was given a \$500,000 severance package and offered stock options — at the time worth very little — which he declined for alternate compensation, according to Encore’s attorneys.

The suit alleged that Encore had breached the terms of Moser’s confidentiality agreement in regulatory filings with the Securities and Exchange Commission. Moser sought \$7.3 million in compensation, including several hundred thousand shares of stock he claimed were owed to him as part of the walk-away package — now worth many times



TERRY W. BIRD



THOMAS V. REICHERT

their value when initially offered — according to Encore’s lead trial attorney during the second trial, Michael Attanasio of Cooley LLP.

Attanasio said there were two main issues at play, both of which were ultimately resolved in Encore’s favor in September.

“The questions were: one, did the disclosures to the SEC fall within one of the safe har-

bor provisions, and two, even if they didn’t, what damages could [Moser] claim?” Attanasio said.

The jury found Encore’s filings were protected, mooting the second question, Attanasio said. *Moser v. Encore Capital Group et al.*, 04-2085 (S.D. Cal., filed Oct. 18, 2004).

Anthony J. Dain, a partner at Procopio Cory Hargreaves & Savitch LLP and attorney

case INFO

Breach of confidentiality agreement

Southern District of California

U.S. District Judge Janis L. Sammartino

Defense attorneys: Cooley LLP, Michael A. Attanasio, Ryan E. Blair; Bird, Marella, Boxer, Wolpert, Nessim, Dooks & Lincenberg PC, Thomas V. Reichert, Terry W. Bird, Preston Lim, Jason D. Kogan.

Plaintiffs’ attorneys: Procopio Cory Hargreaves & Savitch LLP, Anthony J. Dain, Fredrick K. Taylor, Robin L. Phillips; Kyle Ludwig Harris, Frederic Ludwig III.

for Moser, declined to comment on the case. He said there would not be an appeal of the verdict

— Henry Meier