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COVER STORY

## Jury favors Buchalter over dairy

### *\$150M damage claim helped turn panel against plaintiffs*

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SANTA ANA — An Orange County jury on Thursday ruled in favor of Buchalter APC in a lawsuit brought by a dairy farm family that claimed a former attorney conspired to defraud them.

The full defense verdict, which followed 15 trial days and about two days of deliberation, rejected plaintiffs' attorney Robert E. Barnes' argument for \$15 million in damages.

Jurors voted 10-2 for the defense on claims of intentional misrepresentation, negligent misrepresentation, concealment, constructive fraud, conversion and professional negligence. They voted 9-3 regarding breach of fiduciary duty and 11-1 regarding elder abuse, while unanimously rejecting a claim brought under the Civil Racketeer Influenced and Corrupt Organizations Act.

All claims focused on the conduct of attorney J. Wayne Allen when he was a shareholder at Buchalter between 2007 and 2010. Allen had since 2001 been working on an estate plan with sole practitioner Raymond "Ran" Novell for the Stueve family, who are the heirs to the Alta-Dena Dairy fortune.

Barnes said jurors told him afterward their verdict resulted from instructions that indicated Allen's only duty of care was to Novell, who was his sole client.

Jurors who sided with the defense said outside court the plaintiffs' varying damages estimates — Barnes estimated \$150 million in his opening statement — contributed to their verdict as did the strength of the

defense case, which essentially argued the family had always known of and benefited from the years of complex transactions but disagreed with decisions made by now-deceased family members regarding charitable donations and inheritances.

"You guys just always backed it up," the forewoman told Buchalter's lawyer, Alan A. Greenberg of Greenberg Gross LLP, who tried the case with his founding partner, Wayne R. Gross, and two associates, Claire-Lise Y. Kutlay and Stephanie S. Elder.

The family sold the dairy in 1989, went through a bankruptcy and was rich in land assets but low in cash when they enlisted Novell and Allen to overhaul their finances in what Barnes argued essentially became a self-dealing Ponzi scheme involving secretly-sold life insurance policies, circular transactions and undisclosed multi-million-dollar land dealings.

Barnes vowed to appeal.

"You can be a fraud like Wayne Allen and get away with it as long as you make the trustee your co-conspirator and your quote-unquote client," Barnes said, adding the duty to defend issue is "a case of first impression for the Court of Appeals in terms of this issue precisely."

"If I was betting man, and I am, there's a 75 percent chance we're back in Orange County Superior Court 18 months from now," Barnes continued.

One holdout juror tearfully apologized to a Stueve family member as she left Judge William D. Claster's courtroom.

Buchalter Chief Financial Officer Pamela K. Webster said the verdict



Greenberg

ends "eight very stressful years."

"We knew that whatever J. Wayne Allen was — whatever he did — the firm didn't deserve to have 500 families' paychecks at risk," Webster said, referring to the firm's employee count. "We thought that we acted as best we could, given the facts that we had, and that we acted responsibly. But it's been a very, very long time coming."

Buchalter forced Allen to leave in February 2010 after they discovered he loaned himself money from the Stueves' estate. Webster testified at trial that she was concerned about unpaid bills Allen was accumulating but was told by Buchalter CEO Rick Cohen that Allen, who had a close relationship with key Orange County shareholder Martin P. Florman, should be helped "up, not out."

But Webster testified that they didn't know of the other allegations until after Allen left, and Claster cited her testimony when he eliminated punitive damages from the case last week, saying Barnes had not proven Buchalter knew of Allen's alleged misconduct.

"The takeaway from all of this is

Buchalter never should have been sued in the first place," Gross said Thursday, noting Allen's forced resignation.

"Buchalter did the right thing every step of the way," Gross added.

Allen settled shortly before trial for \$1.25 million, which will be paid by his insurer. He was represented by Michael R. Williams of Bienert, Miller & Katzman, PLC. Novell, who represented himself, agreed to a noncollectable judgment of \$200 million that included the dismissal of his wife and daughters, including Ventura sole practitioner Jennifer A. Miller, as defendants.

Berger Kahn, where Allen worked before joining Buchalter, also settled, but the amount has not been publicly disclosed. The firm was represented by Allen L. Michel of Gibson Hoffman & Pancione APC. *Stueve v. Novell*, 10-00411651 (Orange Super. Ct., filed Sept. 24, 2010).

Novell was a longtime friend of the Stueves who attended kindergarten with one of the plaintiffs, Jackie Arthur. Arthur is the daughter of Edgar Stueve, who founded the Alta Dena Dairy in 1945 with his brothers Harold and Elmer. Novell worked closely with Harold Stueve and brother-in-law Boyd Clarke to manage Alta Dena, then the post-dairy Stueve Bros. Farms. He partnered with Allen to overhaul the estate when Allen was a name partner at a small firm in Orange County. Allen went to Berger Kahn in February 2006, then joined Buchalter in July 2007.

Webster said she doesn't fault the other defendants for settling.

"The amount they offered Wayne Allen to settle was shocking in how low it was," she said. "That really evidenced how they were only targeting us."

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