

Daily Journal

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Top Verdicts

The largest and most significant verdicts and appellate reversals in California in 2021

TOP DEFENSE RESULTS

Hussein v. Razin et al.

Case Info

CASE NAME: HUSSEIN V. RAZIN ET AL.

TYPE OF CASE: SECURITIES FRAUD, HOLDER'S CLAIM

COURT: ORANGE COUNTY

JUDGE(S): SUPERIOR COURT JUDGE GLENN R. SALTER

DEFENSE ATTORNEYS: Latham & Watkins LLP, Michele D. Johnson, Peter A. Wald, Andrew R. Gray, Nicholas J. Siciliano, Whitney B. Weber, Kathryn K. George, Mazamir Yousefi, Marissa K. Perry, S. Sonya Shaikh, Allie S. O'Hara, Jordan Mundell

PLAINTIFFS ATTORNEYS: Susman Godfrey LLP, Stephen E. Morrissey, Bryan J.E. Caforio, Amanda Bonn, Kemper P. Diehl



MICHELE D. JOHNSON



PETER A. WALD

Defense attorneys Michele D. Johnson and Peter A. Wald of Latham & Watkins LLP secured a winning jury verdict in July for NextGen Healthcare, Inc. in what they call a "unique and groundbreaking case."

Ahmed D. Hussein, a former NextGen board member and its second-largest shareholder, sued in 2013 claiming he planned to sell his shares, but held them based on false statements made by company executives. His shares lost nearly \$400 million in value when the company's stock price plunged after it retracted its earnings guidance.

"There was very little precedent for us," Johnson said. "Cases like this don't proceed very far and usually don't get tried, if they get brought at all."

The last such "holder's claim" case to go to trial in the United States was in 1935, according to Latham & Watkins. Holder's claims are not permitted under federal securities laws. However,

they are permitted under California law following the state Supreme Court's decision in *Small v. Fritz*, 30 Cal.4th 167 (2003).

"In jurisdictions that recognize [holder's claims], they are narrowly circumscribed," Wald said.

"Under the stringent requirements in *Small v. Fritz*, Hussein needed to prove NextGen knowingly made false statements, that it intended him to rely on these false statements and that he actually or reasonably did rely on the statements and that he suffered damages.

The Latham team demonstrated the company's withdrawal of guidance was prompted by a sudden shift in the broader market rather than fraud.

"The jury accepted that these projections were made in good faith," Wald said. "The fact that things changed suddenly at the end and they didn't come true doesn't mean they were fraudulent or false."

Latham also aimed to show Hussein would not have relied

on NextGen's guidance, given his decades-long history of animosity with its board — waging four unsuccessful proxy contests and publicly vilifying the board and company executives.

But the jury never even got to the question of reliance.

"The incredibly remarkable thing about this verdict is we won on falsity," Johnson said. "On the basic claim of did this company make false statements, the jury answered no. That was really key."

Orange County Superior Court Judge Glenn R. Salter presided over the three-week trial, and jurors took just four hours to reach a verdict. *Hussein v. Razin et al.*, 30-201300679600-CU-NP-CJC (Orange County Sup. Ct., filed Oct. 4, 2013).

A loss could have prompted a flood of shareholder lawsuits looking to use a holder's claim as a payday, Johnson said.

Instead, Wald said, this precedent-setting case could

deter such lawsuits because it shows how heavy the burden a plaintiff must carry.

"What this trial did is provide a vehicle for appellate review of this cause of action," Wald said.

"Without this having gone to trial, there was no way for an appellate court or the superior court to weigh in and say if there is a viable cause of action," he continued.

"If there is, what do you need to prove? If you prove liability, what is recoverable by way of damages? It has the potential to be a landmark decision, depending on what the California appellate courts do with it," Wald added.

Hussein's motion for a new trial was denied.

Stephen E. Morrissey, a partner with Susman Godfrey LLP who represents Hussein, said via email that the court has not yet served an entry of judgment and that he expects his client will appeal once that happens.

— JENNIFER CHUNG KLAM