

SERVING BUSINESS LAWYERS IN TEXAS

## Likely Precedent-setting Case Headed to Appeal

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August 10, 2013 – Pete Marketos scored the biggest victory of his legal career in February when a jury awarded his client \$136 million, the state’s biggest damages verdict this year.

Now the young Dallas trial lawyer faces an even more monumental task: persuading Texas appellate courts to let his client keep the money.

Legal experts are closely watching the case, which pits a South Texas car dealership against Mercedes-Benz USA. They say it is almost certainly headed to the Texas Supreme Court, which will use the huge verdict to decide how much in punitive damages is too much under the state constitution.

The case demonstrates how power and decision-making in civil disputes has shifted dramatically during the last decade from trial courts and juries to appellate judges.

And it has attracted the attention of lawyers representing Texas business – but not for the reasons you might suspect.

“A lot of people with different motivations are watching this case for different reasons,” said former Texas Supreme Court Justice Craig Enoch, now a partner at Enoch Keever in Austin. “It is a case with juicy facts and allegations, great lawyers and the potential to set precedent.”

Eight- and nine-digit jury verdicts are viewed by many appellate judges as the product of runaway juries who are overly sympathetic to injured victims in wrongful death or product liability tragedies. Texas appeals courts almost always reverse or at least significantly reduce multimillion-dollar punitive damage awards.

More than \$115 million of the \$136 million verdict in the Mercedes-Benz case is punitive damages, a ratio of 6.5 to 1. That is three times the punitive damages allowed in other types of civil disputes in Texas.

Mercedes-Benz has filed a notice of appeal with the 13th Court of Appeals in Corpus Christi.

“A jury verdict with this many zeroes is a lot like driving a red Ferrari. It is going to attract a lot of attention,” Dallas appellate law specialist Chad Ruback said. “This case has a long way to go before it is decided.”



*Pete Marketos*

### **High Reversal Rate**

In decades gone by, lawyers focused nearly all of their energy and resources on presenting evidence and arguments to the trial judge and jury. The state appellate courts reviewed the verdicts for glaring errors or bias but generally gave great deference to the decisions reached by the dozen men and women in the jury box and the trial judge who supervised them.

### **Not Anymore**

A 2012 study issued by law firm Haynes and Boone found that Texas appellate judges have shown little hesitancy to toss verdicts. They flyspeck jury instructions from judges for possible errors and second-guess jury decisions about whether the evidence presented was sufficient.

Mercedes-Benz lawyers are likely to raise both of those issues in the appeal, Ruback and Enoch say.

The Texas courts of appeal reversed more than half of the plaintiffs’ verdicts issued by juries, according to the study. Haynes and Boone found that the appellate court with the highest reversal rate in the state is the 13th Court. >

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But the Mercedes-Benz case differs from the many punitive damage awards that were reversed on appeal. The plaintiffs are not typical. This case is business vs. business. It was brought by Carduco Inc., a successful car dealership in Harlingen, and its owner, Renate Cardenas, who is 82 years old.

“My client is a hardworking, conservative businessman who was lied to and defrauded by a business partner,” said Marketos, a partner at Reese Gordon Marketos, a Dallas commercial litigation boutique.

### **‘Send a Message’**

Cardenas came to the U.S. from Mexico as an orphan at age 11. After serving in the U.S. Army during the Korean War, he went to college on the GI Bill. Cardenas owned and operated a Texaco station for years, buying clunkers for \$100, fixing them and reselling them for \$200. He opened his first car dealership in 1971.

“Does that sound like someone who is trying to abuse the court system to get rich unfairly?” Marketos asked. “What happened to my client can happen to any business in Texas.”

During a two-week trial in Cameron County in February, Marketos argued that his client purchased Cardenas Autoplex from his son in 2008 for \$7 million with the understanding from Mercedes-Benz USA that he could move the dealership from Harlingen to the more affluent McAllen.

Cardenas claims that at the same time, Mercedes-Benz officials were secretly negotiating to open a dealership in McAllen with a competitor, according to Marketos.

Marketos alleged criminal fraud, which opened the door to punitive damages under Texas law.

State District Judge Federico Hinojosa delivered a severe blow to Mercedes-Benz’s defense when he issued a finding that the automaker had destroyed or lost internal corporate emails and memos that would have helped Cardenas better prove his case.

“Mercedes-Benz doesn’t know what it means to tell the truth,” Marketos told jurors during closing arguments. “They have a different definition for lying, and that’s how they do business and that’s how they make money.”

Marketos told jurors that Mercedes-Benz USA generated \$75 million in profit in 2012 and that a \$10 million punitive damages verdict would be nothing more than “a rounding error” to Mercedes-Benz.

“Send a message,” Marketos implored in his final plea to the jury.

### **Juror Speaks Out**

Mercedes-Benz officials and lawyers declined multiple requests for comments. In court documents, the company claims that its officials never misled Cardenas and never made any written promises allowing him to relocate to McAllen.

“You can’t hold them accountable because they didn’t do anything wrong,” Eduardo Rodriguez, a partner at Atlas Hall Rodriguez representing Mercedes-Benz, told the jurors during closing arguments.

Eleven witnesses testified during two weeks of trial. On Feb. 15, the jury deliberated 58 minutes before finding that Mercedes-Benz and its officials had defrauded Cardenas. It awarded him \$21 million in actual damages.

More important, the 12 jurors ruled that Mercedes-Benz’s deceptive practices caused Cardenas to purchase the car dealership. That deception is a criminal felony under Texas law. The jury levied \$115 million in damages as punishment.

“For many years, I have heard about runaway juries and frivolous lawsuits, and I went to jury duty determined that was not going to be me,” said Rebecca Guerra, who served as the presiding juror in the case.

“The evidence against Mercedes was overwhelming. The judge’s charge was clear,” said Guerra, a single mother of two and an >

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**At A Glance: Pete Marketos**

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<b>Age:</b>	38
<b>Education:</b>	University of Texas Law School of Law, Class of 1999; Rice University, bachelor's degree, 1996
<b>Experience:</b>	Haynes and Boone, 1999 to 2011, made partner in 2008; founding partner at Reese Gordon Marketos in Dallas, 2011 to present
<b>Biggest Previous Case:</b>	He represented Dallas-based TransFirst Holdings in a racketeering and fraud case against former executives of a company that TransFirst had acquired. Marketos was the lead trial lawyer in a three-week federal court trial that resulted in a \$13 million judgment for his client.

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**Notable Reversals**

The Texas Supreme Court has reversed or reduced numerous punitive damage decisions over the last decade. Here are three examples:

**2004: The Case:** State District Judge Bascom Bentley III of Palestine sued radio talk-show host Joe Ed Bunton for defamation with actual malice after Bunton accused the judge of corruption on the air. The jury awarded Bentley actual damages of \$1,150,000 \$1.15 million and punitive damages of \$1 million.

**Supreme Court Action:** After the Tyler Court of Appeals suggested reducing actual damages to \$300,000 but keeping the \$1 million intact, the Texas Supreme Court reversed, stating that the lower court should re-evaluate it “in light of the actual harm suffered by the plaintiff.”

**2006: The Case:** Nury Chapa claimed that she bought a Toyota Highlander Limited from Tony Gullo Motors for \$30,207, but that the auto dealer only delivered a base model. The Beaumont jury awarded actual damages of \$28,852 and punitive damages of \$250,000.

**Supreme Court Action:** After the court of appeals cut the punitive damages in half, to \$125,000, the state Supreme Court reversed, finding that even that was unacceptably high.

**2010: The Case:** Randy Reynolds sued the Bonham Corp. and its president, Thomas Bennett, alleging that they sold 13 head of Reynolds' cattle that strayed onto corporate land. A jury awarded Reynolds actual damages of \$5,327.11 and punitive damages of \$1 million.

**Supreme Court Action:** It reversed the lower court, saying the 188-to-1 ratio of punitive damages to actual damages was constitutionally excessive.

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insurance specialist at an oncology medical practice. “There were people on the jury who wanted the verdict to be much higher.”

The case now moves to the 13th Court of Appeals. Mercedes-Benz has hired two high-profile Baker Botts appellate law experts — former Texas Supreme Court Chief Justice Tom Phillips and Austin partner Joe Knight — to lead its efforts to have the verdict overturned. Strasburger & Price partners Merritt Spencer and Alex Huddleston, along with Rodriguez, represented Mercedes-Benz at trial.

Marketos has added Austin appellate law expert Don Cruse to the plaintiff legal team.

The entire appeals process could be resolved in as little as two years, but it could take a decade or more.

“Both sides are beefing up for a vigorous and hard-fought appeal,” Enoch said. “This shows how important this appeal is going to be.”

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