

# DAILY REPORT

TUESDAY, DECEMBER 22, 1998

FULTON COUNTY DAILY REPORT

VOL. 109, NO. 248

## Six Flags Verdict: \$454 Million

### *Gwinnet Jury Hits Time Warner with \$257 Million Judgement in Punitive Damages*

BEN SCHMITT

The jury in an investors' suit over the operation of Six Flags Over Georgia on Monday delivered the second of two body blows to the park's former manager Time Warner--a one-two punch that totaled \$454 million.

The punitive award of \$257 million plus a \$197 million compensatory damage award on Friday, produced by far the biggest civil award in Georgia courts.

It is more than four times the state's previous highest verdict, which was won by James E. Butler Jr. of Butler, Wooten, Overby, Pearson, Fryhofer & Daughtery in Columbus, one of Monday's winning lawyers as well.

Time Warner is responsible for about \$95 million of Friday's compensatory damage award by the Gwinnett Superior Court jury.

On Monday came the punitive award, which breaks down as follows: Time Warner Entertainment Co., \$245 million; Six Flags Entertainment Corp., \$8 million; Six Flags

Parks, Inc., \$3 million, and Six Flags Over Georgia, Inc., \$1 million. Six Flags Over Georgia v. Time Warner, 97-A-1939-1. (Gw. Super. filed March 19, 1997).

### **Accused of Shortchanging Park**

The trial began Nov. 16 before Judge James W. Oxenedine.

The plaintiffs are limited partners who contended that Time Warner systematically shortchanged the park after 1992 to insure it would sign a new contract to manage the park. The plaintiffs charged that the Time Warner-dominated management kept the business from being as prosperous as it otherwise would have been (Daily Report, Oct. 17, 1997).

As a result, a new management arrangement in 1996 yielded the investors millions less than it otherwise would have, according to plaintiffs attorney H. Lamar Mixson of Bondurant, Mixson & Elmore. The suit originally asked for \$250 million in compensatory



James E. Butler Jr. was among lawyers for Six Flags investors who won a compensatory damage award Friday of \$197 million, then a \$257 million punitive damages award Monday. The acquisition of a Batman roller coaster was an issue at the trial

damages.

Huge verdicts often undergo alteration before money changes hands, of course. The state's previous high award, \$105.24 million against General Motors won by Butler, Wooten in 1993 in Fulton State Court, was reversed and was settled for an undisclosed amount.

Mixson says of Monday's punitive award, "I think this will stand up. It's well in the acceptable range. It's only 112 percent of the actual damages."

### Far Eclipses Previous Verdicts

The amount leaves most other big awards in Georgia in the dust. After the \$103 million GM verdict, the next three are between \$45 million and \$50 million apiece, according to an unofficial Daily Report tally.

In an unsuccessful effort to minimize the punitives award, Time Warner Vice Chairman Ted Turner testified Monday.

He told jurors he learned of the \$197 million award the day after it was made and flew back to Atlanta from New Mexico to testify.

"Of course, I was very upset," said Turner.

Turner first pointed out that Monday was his wife Jane Fonda's 61st birthday and the couple's wedding anniversary.

"So I was planning to spend the day with her, and I plan to, whatever is left of it," Turner said.

He closed his direct examination with a qualified apology.

"If we have done anything wrong, I want to apologize for it," he said, "and I'm going to do everything I can, as I have done in the past since I have been a part of this company, just for the last two years, to be sure that we are good citizens and have the highest integrity in all our dealings with our partners and our customers and the population of the United States as a whole."

Butler urged the jurors to look past Turner's social status in issuing the second phase of their verdict.

"They hope his mere appearance will

sway you from doing your duty," said Butler, referring to Time Warner.

One of Time Warner's lawyers, Evan R. Chesler of Cravath, Swain & Moore in New York, essentially told jurors in his closing argument that they had already awarded enough damages.

"The damages you have found are much larger than all of the profits that Time Warner ever made from the Georgia park," he said.

Turner said he chose to merge his company, Turner Broadcasting System with Time Warner in 1996 because of Time Warner's stellar reputation.

"There were a lot of other opportunities to merge with other companies who did not have as good a reputation for integrity as Time Warner," Turner said. "So this whole thing really surprises me and disappoints me, you know, what's happened here."

Turner said he did not have any personal responsibility for Six Flags when it was partially owned by Time Warner. He also said that he is not familiar with the



**Time Warner Vice Chairman Ted Turner told jurors Monday, "If we have done anything wrong, I want to apologize for it."**

facts of the relationships between Time Warner and the partners in Georgia's Six Flags Park and had no involvement with this case.

In his cross examination, Butler asked Turner if he came to court Monday to sway the jury from returning a large punitive damages verdict.

"Mainly yes," answered Turner. Turner also said, under cross examination, that the value of his Time Warner stock is \$5.5 billion.

Butler also asked Turner if he knew the trial was scheduled nearly a year ago. Turner responded that he didn't.

"The truth is, sir," said Butler, "There has been plenty of time if Time Warner was any respector of fiduciary duty to come up with a plan of action and do something, isn't that true?"

Turner responded, "It wouldn't have necessarily gotten to me. I mean, these



**Plaintiffs lawyer H. Lamar Mixson said he thinks the punitive award "will stand up. It's well in the acceptable range. It's only 112 percent of the actual damages."**

parks have been sold."

Also on Monday, Time Warner President Richard D. Parsons testified that the verdict will have a financial impact but more importantly will damage the company's reputation.

"It concerns me because of what it says about the company," Parsons said. "That, to me, is as significant as anything else. It's a black eye, and we take it very seriously."

On Monday afternoon Chesler said of the punitive award, "The jury has

spoken, and we'll review our options and decide what to do. Certainly we're disappointed."

Time Warner and its partners withdrew from the Six Flags arrangement in February. The parks are now run by Premier Parks in Oklahoma City. The Six Flags chain includes several amusement parks across the country.

### Hinged on Thrill Rides

Although the dispute dealt with complicated business arrangements, it also revolved around the most basic and visible element of the park--the thrill rides.

Plaintiffs charged that Time Warner delayed installing popular attractions such as the Batman roller coaster, which opened last year but reportedly had been installed in other parks years earlier.

Butler said Time Warner diverted a Batman roller coaster to a St. Louis park which it owned in full.

"They knew the impact of the ride would increase attendance revenue and profits and therefore increase the value of the park," Butler said. "They were going to get the Georgia park and get it cheap."

The suit accused Time Warner of reselling old rides from other Six Flags Parks at inflated prices to the Georgia park.

For example, a used roller coaster called the Viper was bought for the Georgia park from a New Jersey park at twice the previous price, the plaintiffs argued. [end]

*Ben Schmitt's e-mail address is bschmitt@counsel.com.*