From the January 23, 2006 Virginia Lawyers Weekly.

News Story

In latest cases, high court gives, takes away

By Alan Cooper

The Supreme Court of Virginia gives and the court takes away.

And we're not talking chump change.

The phrase "Reversed and final judgment" at the end of opinions issued on Jan. 13 reinstated $4 million of a defamation verdict that a judge had remitted and took away a $5.1 million verdict for a business whose store was destroyed by fire.

In the defamation case, Government Micro Resources Inc. and its chairman, Humberto Pujals Jr., hired Alan W. Jackson as president and chief executive officer in July 2001.

The company did not prosper during Jackson's tenure, and he was fired in March 2002 for what GMR alleged was "gross mismanagement" of the company's finances.

After he was fired, Pujals told executives at Seisint Inc., a company that had talked to GMR about helping it win a supercomputer contract with the federal government, that Jackson had "mismanaged the company and cost him a tremendous amount of money."

The executives recalled another conversation in which Pujals put the loss at $3 million.

Seisint nevertheless hired Jackson as a sales representative, and Pujals described Jackson's work for Seisint as a "very, very mean thing to do."

At trial, Jackson presented evidence that GMR's financial situation was much worse than Pujals had led him to believe when he hired him and disputed Pujals' statement that he had mismanaged the company or been responsible for any losses.

A Prince William County Circuit Court jury awarded Jackson $5 million in compensatory damages and $1 million in punitive damages. Judge LeRoy F. Millette Jr. reduced the punitive damages award to $350,000, as required by state law, and cut the compensatory award to $1 million. He concluded that the award was shockingly excessive and based on confusion by the jury that resulted in the inclusion of damages stemming from Jackson's termination rather than from the defamation.

Writing for a unanimous court in *Government Micro Resources Inc. v. Jackson* (VLW 006-6-017), Justice Donald W. Lemons ruled that the evidence did not support Millette's finding of confusion. Moreover, "the trial court did not address the injuries presumed in defamation per se or the evidence regarding the impact of the defamation on Jackson's emotional state, reputation, and employment opportunities, all of which the jury was entitled to consider."

Jackson testified that the GMR position was one of three management opportunities he had before the defamation. He did not receive any management offers after it, despite extensive efforts to obtain one, he said.

Reston attorney Elaine Charlson Bredehoft represented Jackson during the trial and on appeal. Lynn F. Jacob of Williams Mullen's Richmond office and Karen A. Doner from the firm's Tysons Corner office represented the defendants at trial, and E. Duncan Getchell

argued the case on appeal.

Getchell said the Supreme Court's decision was disappointing and added that attorneys who regularly practice employment law might want to closely review the court's analysis of the pleading requirements in defamation cases as well as its conclusion that Pujals' comments were statements of fact rather than opinion.

The second case stemmed from the fire at Saxon Shoes Inc. in western Henrico County in February 2001. Saxon's insurer, Selective Insurance Group Inc., settled with the shoe company and sought subrogation from Blue Ridge Service Corp. of Virginia, the employer of the crew that cleaned the building shortly before the fire.

Saxon's fire cause and origin expert, Ronald L. Hiteshew, testified that he believed that the fire started in a trash box near a work bench. Because a member of the cleaning crew smoked, Hiteshew concluded that the fire started from discarding a cigarette in the bin.

Hiteshew said he reached that conclusion after excluding other possible sources of ignition, such as a light fixture near the box.

Members of the cleaning crew said only one of them smoked, and they testified that he did not smoke inside the building. The crew member who smoked said he had smoked two cigarettes outside the building while it was being cleaned but did not smoke inside.

Blue Ridge's attorneys contended that Hiteshew's testimony was based on speculation but failed in their effort to get Henrico Circuit Judge Daniel Balfour to exclude it.

Writing for a unanimous court, Justice G. Steven Agee agreed with the defense attorneys in *Blue Ridge Service Corp. of Virgina v. Saxon Shoes Inc.* (VLW 006-06-016). "The record before us is devoid of any evidence upon which Hiteshew could conclude that a smoker on the cleaning crew caused the fire by tossing a cigarette in the wastepaper box.

"His conclusion that since [the crew member] smoked on the night of the fire, he must have smoked inside and then discarded the cigarette in the trash box is pure speculation which we have repeatedly held is unreliable as a matter of law," Agee said.

Without Hiteshew's testimony, Agee said, Saxon did not have a prima facie case that Blue Ridge had breached any duty to Saxon or evidence of a probable cause that could be attributed to the cleaning crew.

"Thus, the trial court also erred in denying Blue Ridge's motion to strike Saxon's evidence," Agee concluded.

Richmond lawyers W. Joseph Owen III and Samuel J. Kaufman represented Blue Ridge at trial, and Getchell argued the case for the cleaning firm before the Supreme Court. Robert A. Stutman and Daniel Hogan of Fort Washington, Pa., represented Selective.

Getchell said the decision was welcome but hardly a surprise in light of the Supreme Court's consistent rejection of expert testimony that is at all speculative.