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HEADLINE: Hennigan Spins Zevon Lyrics in Sempra Win

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BODY:

Editor's Note: We have revised an earlier version of this story to include comments from Frank Kaplan, who represented the California Department of Water Resources.

J. Michael Hennigan has become very familiar with the details of California's energy crisis of 2001. For the third time, Hennigan defended Sempra Energy at trial against claims brought by the California Department of Water Resources arising from that frenzied period. And for the third time, Hennigan, a founder of Los Angeles's Hennigan, Bennett & Dorman, has walked away successful.

On Monday, after a six-week trial, a jury in San Diego superior court found that the state could not get out of a ten-year energy contract it signed with Sempra in 2001, when energy prices spiked. (You can read Bloomberg's account of the verdict here.) Sempra had sued the Department of Water Resources, which buys power for the state, in 2002 to keep it from canceling the contract. The state argued that it was entitled to rescind the contract because Sempra had failed to fulfill a pledge to build a certain type of power plant to deliver the energy. As Hennigan told the *Litigation Daily*, the state had estimated that rescinding the contract would save it \$2 billion, and it also sought \$80 million in direct damages.

Hennigan argued to the jury that there was no breach of contract, and that instead this lawsuit was a politically motivated move by public officials who now regret that the state entered into such an unfavorable long-term contract. To press his point, Hennigan recited to the jury passages from the Warren Zevon song, "Lawyers, Guns, and Money." ("I was gambling in Havana/ I took a little risk/ Send lawyers, guns, and money/ Dad, get me out of this.")

Frank Kaplan of Bingham McCutchen, who represented the state, notes that the jury didn't give Sempra "a clean bill of health." He explains: "There were a number of [jury] findings that concluded that Sempra intentionally and negligently misrepresented certain facts." Still, he adds that the jury didn't grant the state any of the relief it requested. "It apparently concluded there was no damage, but they clearly found that there was intentional misrepresentation." (A copy of the verdict form is here; the misrepresentations are found at questions 41-48.)

The other two trials that Hennigan handled for Sempra involved the state's attempt to get out of the same contract. In the first case, Sempra did have to refund the state roughly \$70 million in overcharges, but Hennigan counts that as a good result because the state was seeking \$700 million and termination of the contract. In the second trial, Sempra won completely, according to Hennigan. Sempra had unsuccessfully argued that this case should have been barred by collateral estoppel.

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