

# Local jury sides with Texas company in Pepsico lawsuit

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News Messenger

A local jury has delivered a \$55 million judgement against PepsiCo, Inc., according to attorney Gil Gillam of the Baldwin & Baldwin law firm, who represented a tiny Texas company against the softdrink giant in federal court here last week.

Pepsi was found guilty of fraud, disparagement and wrongful interference in its dealings with MaximICER, a five-man company based in the Austin area, Gillam said.

"MaximICER was like every small

company living the American dream," said Gillam,

"And PepsiCo was like too many huge American corporations in the news recently. They set out to increase their own profit by taking it to the little guy."

"The jury tried to set things right," said Gillam.

MaximICER was awarded \$1,053,500 in actual damages and \$54,870,510 in punitive damages against Pepsi, Gillam said.

"Of all the case I've tried, this is probably the most justified conclusion,"

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## Harrison County jury returns judgment against Pepsico

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Gillam said, "Pepsi treated these people badly and the jury was incensed."

At issue was a product invented by MaximICER that improves carbonation in fountain drinks, according to J.L. Love, managing partner for the company.

"It helps sodas retain more carbonation," said Love, "And it reduces the amount of energy, the amount of waste water and the amount of potable water, with a cost savings in each of those areas," Love said.

"The device can be installed on fountain beverage dispensers," Gillam said.

"It makes the fountain soda taste better, like what you get out of a bottle or a can."

Gillam said his client had the opportunity to sell the device to Kentucky Fried Chicken and other restaurants owned by Tricon, including Pizza Hut and Taco Bell, but Tricon needed approval from Pepsi before installing the device.

Pepsi delayed approval of the product while they secretly began developing a competing product, Gillam said, "And then Pepsi sent a report to Tricon saying the MaximICER did not work well."

Mario Rodriguez of Pepsi referred to the MaximICER inventors as "snake oil salesmen," Gillam said, while Bill Black of Pepsi threatened MaximICER with the "harsh treatment possible," according to court documents.

One of Pepsi's engineer's, Bruce Salatino, when questioned about whether or not it was an embarrassment to Pepsi to have made so many misleading statements about

MaximICER's product stated, "It's not an embarrassment to me because if I look at it as a percentage of the information that I communicated and the actual amount of misleading statements, as a percentage of that, I would say that I was accurate more times than I misled someone," court documents show.

This statement was called "ridiculous" in deposition testimony from one of Pepsi's own corporate auditors, Gillam said.

"You can't grade honesty on a percentage basis," said Gillam.

"The interesting thing is Pepsi has a code of conduct they're very proud of," Gillam said, "It states how suppliers and producers should be treated."

"Our clients were treated badly and I think the jury wanted to send a message to Pepsi that they were pretty displeased," Gillam said.

"It's nice to know the little guys can still win," said Mr. Love of MaximICER.

"We put all of our eggs in the Pepsi basket and then when they came out with a report that damned our product, it made it impossible for us to sell in that market," Love said.

"And Pepsi announced their own competing product that same week," he said. "They really shafted us."

The jury found that Pepsi made disparaging comments about MaximICER's business, that Pepsi wrongfully interfered with MaximICER's prospective contractual relations with prospective customers, that Pepsi committed fraud against MaximICER and that the harm done to MaximICER

resulted from malice or fraud.

"The attorneys made a fabulous presentation," said Love.

"In fact the judge commented about the quality of the representation."

Federal Judge T. John Ward of the Eastern District of Texas told the jury they had seen advocacy at the highest level, Love said.

"And the people of Marshall were such nice people," said Love, who attended the week-long trial with his co-plaintiffs Christy Neill and Danny Welch of MaximICER.

"We still have to wait through the legal process before we see any money," said Love, "But we'll continue this out to the very end."

Meanwhile, said Love, "We are already doing some business with Coke."

Pepsi is expected to appeal the verdict, said Gillam, who shared the courtroom victory with Roger Sanders of the Sanders, O'Hanlon & Motley law firm from Sherman.