

Appellate Lawyer of the Week: Lawyer Beats Hair Care Billionaire at Fifth Circuit

[John Council](#), *Texas Lawyer*

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It was a big enough deal when **Geoffrey Harrison** convinced the U.S. Fifth Circuit Court of Appeals that a \$122.9 million foreign fraud judgment should be enforced against John Paul DeJoria, one of the United States' richest men.

But after winning that Sept. 30 ruling against DeJoria, who built his fortune on the famous John Paul Mitchell hair care line and Patron tequila, **Harrison** beat the billionaire two more times at the Fifth Circuit this month after the businessman drafted Texas Attorney General Ken Paxton and one of the state's largest law firms to attack the appellate decision.

"I'll tell you this: it is not every day that I get to win three times in the Fifth Circuit in one case in the space of a month and a half. But that's what happened here," said **Harrison**, a partner in Houston's Susman Godfrey.

According to the Fifth Circuit's decision in *DeJoria v. Mideast Fund for Morocco*, DeJoria was a major investor in a company that was engaged in oil exploration in Morocco. He later formed Lone Star Energy Corporation to operate in the country. Corporations formed in Morocco must have a local shareholder according to local law, so Lone Star partnered with a Moroccan Prince Moulay Abdallah Alaoui, a first cousin of Moroccan King Mohammed VI.

King Mohammed himself later assured DeJoria that he would line up additional investors in the project. And DeJoria represented to Moroccan investors, Mideast Fund for Morocco [MFM], that his company had invested \$27.5 million in the project and that the market value of his company was roughly \$175.5 million.

In 2000, King Mohammed gave a nationally televised speech to announce the discovery of copious and high-quality oil in Morocco. The Moroccan stock market soared. But the oil reserves were not as plentiful as announced. DeJoria was replaced on Lone Star's board of directors and

he has not been back to Morocco since 2000 and claims his life would be endangered if he returned.

MFM later sued DeJoria in Morocco claiming he fraudulently induced investment in the project by misrepresenting his company's actual investment in Lone Star. After nearly seven years of litigation, a Moroccan court entered a judgment in favor of MFM for \$122.9 million.

DeJoria fought the judgment in the United States and convinced a federal judge in the Western District of Texas that the award should not be recognized in the state under the Texas Recognition Act because the Moroccan judicial system does not provide due process among other things. MFM appealed the judgment to the 5th Circuit.

Specifically, DeJoria argued that the Moroccan judiciary is made up of judges who are beholden to the king and therefore lack independence. While the trial court agreed with his argument, the 5th Circuit concluded it didn't present the entire picture of Morocco's judicial system.

Moroccan attorneys and expert witnesses testified that that the Moroccan system places great emphasis on providing actual notice to defendants, it adheres to international standards, and the Moroccan government has implemented reforms intended to increase judicial independence and impartiality.

"The Texas Recognition Act does not require that the foreign system be perfect. Instead, a judgment debtor must meet the high burden of showing that the foreign judicial system as a whole is so lacking in impartial tribunals or procedures compatible with due process so as to justify routine non-recognition of the foreign judgments," wrote Fifth Circuit Chief Judge Carl Stewart.

"DeJoria has not met this burden. Based on the evidence in the record, we cannot agree that the Moroccan judicial system lacks sufficient independence such that fair litigation in Morocco is impossible," Stewart wrote, reversing and remanding the trial court's decision in the case.

DeJoria later retained lawyers from Baker Botts to file a motion for rehearing in the case and convinced Paxton sent the Fifth Circuit an amicus brief supporting their motion for rehearing.

But Fifth Circuit denied the motion for rehearing last month and would not accept Paxton's brief because he did not obtain leave for the court to file the document.

And in a usual move, DeJoria then asked for the Fifth Circuit to vacate its order denying en banc rehearing but was refused Nov. 19.

"Again, the case is over for DeJoria and he must confront the stark reality that he owes \$122.9 million dollars plus interest," said **Harrison**, who represents MFM in the case.

Aaron Streett, a partner in Baker Botts who represents DeJoria on appeal, said it was important for the Fifth Circuit both to reconsider the case and read Paxton's brief supporting their argument that the judgment should not be recognized in Texas.

Streett explained the DeJoria wasn't arguing that the entire Moroccan judicial system is unfair, but it is when an American is litigating against the country's king.

"Our argument is simply under the Texas statute, you don't just look at the system of the whole, you also look at the parties at issue as to whether to recognize a foreign judgement or not. And the Fifth circuit panel disagreed. And the question was only whether it was impossible to get a fair hearing in the system as a whole," Streett said. "So that was one of the main arguments for the petition for rehearing and an argument that the state supported us on."

Streett said he filed the motion to vacate court's en banc rehearing denial to get Paxton's brief in front of the court.

"I certainly recognize that was an unusual to file a motion after the Fifth Circuit had already denied rehearing," Streett said. "That decision was taken with a lot of consideration. But we really felt strongly that this was an important brief for the court to read."

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