

Daily Journal

FEBRUARY 26, 2025

TOP VERDICTS OF 2024

Herrick Productions LLC v. Mattel Inc. et al.

In 2014, Mattel received a pitch from experienced reality show producer Phil Gurin, who was partnering with Norton Herrick, a billionaire New Jersey real estate developer.

Herrick, aiming to break into the television business, had optioned the concept of "Playmakers" -- a reality competition similar to "Shark Tank" where adult toy inventors pitched their toy inventions to a panel of children who would pick the winning toy. Mattel was approached to provide the "prize" -- a contract to manufacture the winning toy and to be a financial sponsor. However, after a disagreement with Herrick, Gurin left the project, and Mattel informed Herrick that it would not proceed with Playmakers without an experienced producer. Herrick was unable to find another producer for the show.

In 2017, Mattel sponsored the ABC



LAWRENCE Y. ISER



PATRICIA A. MILLETT



KRISTEN L. SPANIER

reality show "The Toy Box," based on a pitch from a different reality show producer. "The Toy Box" involved adults pitching toy inventions to a panel of adult toy industry mentors, who chose toys to be put through to a panel of children judges who picked the winning toy. Herrick subsequently brought an "idea submission" law-

suit against Mattel, claiming that Mattel stole the idea for "Toy Box" from Herrick's Playmakers concept. Herrick alleged a "Desny" claim for breach of an implied contract, breach of confidence, misappropriation of trade secrets and fraud.

The case proceeded to trial in May 2024 after a lengthy jury selection process involving more than



CHAD R. FITZGERALD

700 jurors, said Mattel's lead attorney in the case, Lawrence Y. Iser, of Kinsella Holley Iser Kump Steinsapir.

In August 2024, after eight weeks of testimony, Mattel presented sub-

CASE DETAILS

CASE NAME	Herrick Productions LLC v. Mattel Inc. et al.
TYPE OF CASE	Breach of implied contract, breach of confidence
COURT	Los Angeles County Superior Court
JUDGE(S)	H. Jay Ford III
DEFENSE LAWYERS	Kinsella Holley Iser Kump Steinsapir, Lawrence Y. Iser, Patricia A. Millett, Kristin L. Spanier, Chad R. Fitzgerald
PLAINTIFF LAWYERS	Liner, Freedman, Taitelman & Cooley, Bryan J. Freedman, Jesse L. Kaplan; Raines Feldman Littrell, Miles J. Feldman, Robert M. Shore

stantial evidence that in 2014, it had received pitches for the same concept from multiple producers, that “The Toy Box” was created and developed independently of “Playmakers,” and that if there was an “implied contract” arising from the Playmakers pitch, Herrick breached that contract when Gurin left the project.

Mattel also demonstrated that Herrick’s expert testimony was speculative and overreaching. The jury returned a complete defense verdict for Mattel.

“The verdict is significant because, although idea submission claims are commonly asserted against television and film studios, such cases rarely proceed to trial,” Iser said. “By proceeding to trial, Mattel, a highly creative company, established that it does not steal ideas.”

Throughout the case, Herrick’s claims repeatedly morphed, said co-counsel Patricia A. Millett.

The case was originally pled as a Desny claim under the theory recognized in *Desny v. Wilder*. However, before trial, Herrick abandoned that theory, stating they were not alleging a Desny claim because Herrick never intended to sell its ideas to Mattel, which was not a television producer during the relevant time period, Millett said.

“Herrick then claimed it was pursuing two different alleged implied contracts: an implied exclusivity agreement (that Mattel impliedly agreed that it would work exclusively with Herrick if it became involved in any project similar to Herrick’s idea) and an implied non-disclosure agreement,” she said.

“Adapting to theories that changed on the eve of trial was challenging.”

Another challenge was rebutting the opinions of plaintiff’s highly-paid expert witnesses, said co-counsel Kristen Spanier. The evidence was undisputed that “The Toy Box” only aired for two seasons (with 16 total episodes) and was not a financial success, she said. It was also undisputed that, before “The Toy Box” aired, Plaintiff entered into an agreement with The CW for the development and potential production of a reality show based on plaintiff’s format. However, after plaintiff made a live presentation of the show to The CW, the network passed.

“Despite this evidence, one of plaintiff’s expert witnesses opined that, but for Mattel’s alleged wrongdoing, plaintiff not only would have

gotten a television show based on its format on the air, but the show would have lasted at least eight seasons (with 110 episodes) and have been a domestic and international success, earning plaintiff between \$30 and \$50 million,” Spanier said. “We had to work with various entertainment industry experts to demonstrate the speculative nature and faulty reasoning of the opinions of plaintiff’s experts.”

One of the plaintiff’s attorneys, Miles J. Feldman of Raines Feldman Littrell, said several jurors found in Herrick’s favor.

“We respect the very capable judge,” Feldman said. “However, we believe there were serious errors in the jury instructions that will require a reversal. We have therefore filed a notice of appeal and will raise those and other issues.”