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Tacoma-based Continuant awarded \$60 million in federal case against Avaya

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Continuant CEO Doug Graham said at his company's Fife offices that he has spent several years and millions of dollars in a lawsuit against telecommunication giant Avaya.

PHOTOS BY LUI KIT WONG/STAFF PHOTOGRAPHER

Goliath, meet David.

David, order the pizzas.

In a case that has lasted nearly eight years, and following a six-month trial in a New Jersey federal court, Tacoma-based Continuant has won a jury verdict against telecommunications giant Avaya.

Continuant officials ordered 52 pizzas delivered to their headquarters to celebrate Thursday's verdict. In a brief speech, Continuant CEO and founder Doug Graham thanked employees.

He was greeted with a standing ovation during a brief company meeting.

"I thanked them," Graham said Thursday afternoon. "This has made all of our jobs tougher. I tipped my hat to them."

The jury found that Avaya, a manufacturer of telecom equipment, violated antitrust laws. In its verdict, the jury awarded Continuant \$20 million in compensatory damages. By law, the damages will be trebled to \$60 million.

In a statement Thursday, Avaya spokeswoman Deb Kline said, "Today the jury rejected the majority of TLI/Continuant's anti-trust claims. We are pleased they also rejected the vast majority of what TLI/Continuant sought in damages. Avaya anticipates post-trial motions and an appeal."

At issue was Continuant's ability to offer repair and other customer services to owners of Avaya systems.

Avaya had previously charged that the independent Continuant had no right to repair or maintain Avaya systems. Continuant claimed that this denial represented monopolistic intent that violated antitrust laws.

Continuant had asked for \$144 million in damages. Graham has estimated that the case – with lawyers and travel – has cost his company "tens of millions of dollars."

"When Avaya couldn't beat us in the market place, they tried beating us with almost eight years of scorched-earth litigation," Graham said.

The case engendered support from the independent industry.

"It seems to be a case of Avaya trying to flex its muscles and intimidate a third-party maintainer," said Joe Marion, president of the Association of Service and Computer Dealers International and the North American Association of Telecommunications Dealers.

The nonprofit association represents some 500 dealers nationwide.

"We believe that third-party maintainers should not be denied any of the tools or diagnostics or parts necessary for companies to make a choice," Marion said recently from association headquarters in Florida.

The case, he said, is "very significant. The ramifications do extend beyond telecommunications."

The eight-person jury found that Avaya violated antitrust law in its attempt to prohibit Continuant from providing post-warranty maintenance of Avaya telephone and predictive dialer systems designed to serve large businesses, according to a Continuant release Thursday.

Anthony P. La Rocco, one of the partners who led the 15-lawyer K&L Gates team representing Continuant, said in a statement Thursday, "We are pleased to have been able to represent Continuant in obtaining this monumental verdict, which will result in greater choice of service and better pricing options for customers not only in the telecommunications sector but across several industries."

"I quite frankly didn't realize that even when you're right, it is a difficult process," Graham said Thursday. "You have to have good lawyers. If I didn't have as good of a legal team, we wouldn't have won."

With the verdict, he said, "We now have the ability to compete. Now everybody else gets to compete also."

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