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*After ADT executives were incarcerated in Mexico, the security company could have quietly tried to put the matter behind it. Instead, ADT fought back—*  
***winning a \$112 million RICO claim.***

## Border WARS

*By Andrew Longstreth*

Photography By Robert Seale

*In*

*the summer of 2008, Thomas Ajamie* was in Mexico City taking a deposition for his client, the Mexican affiliate of ADT Security Services Inc. Ajamie was interviewing Juan Reyes, one of ADT's former executives. Reyes, looking nervous at times, described how over the past four years a handful of ADT executives in Mexico had been arrested and incarcerated, including himself, on charges related to a contract dispute. Reyes had reason to feel uneasy. His four-and-a-half days in a Mexican jail were a horrific experience. But there was another cause for his anxiety: The Mexican businessman, Jesus Hernandez Alcocer, who Reyes said was responsible for the arrests, was sitting just a few feet from him at the deposition table.

Throughout the litigation—which ADT had brought against Alcocer and others in Texas state court—Alcocer had regularly attended depositions of adverse witnesses, which he was allowed to do under Texas court rules. Alcocer, who is in his late sixties, was hard to miss. He wore flashy clothes and could often be overheard on his cell phone at the depositions. In Mexico City, Ajamie says, Alcocer's wardrobe included a gun in a holster on his belt. (Alcocer's lawyers deny that he carried a gun.)

Apparently Alcocer didn't like what he was hearing at Reyes's deposition. As the interview was concluding, Alcocer began muttering in Spanish. Ajamie warned him to keep it down, or he'd have "big problems." Alcocer then leaned across the table, according to Ajamie, clenched his fist and cocked his hand back for what looked like a right hook. According to the deposition transcript, Alcocer then told Ajamie: "*Tè van a partir tu madre.*"

What did Alcocer mean by that Spanish colloquialism? Although no punch was thrown, Aja-

mie thought the businessman meant, “I’m going to rip your head off.” But Alcocer’s lawyers contend that their client only meant, “We’re going to beat you in court.”

At the time of Reyes’s deposition, ADT and Alcocer were locked in a bruising legal battle. ADT Mexico accused Alcocer of being responsible for the arrests and incarceration of its executives in an effort to pressure ADT into settling a civil dispute with some of its Mexican distributors. Alcocer claims that he never did anything against the law in Mexico, and that it was ADT—a unit of Tyco International, Ltd.—that broke the law by stealing security equipment from the dealers.

Nearly every fact has been disputed in this case, which includes more than 200 motions and around 75 hearings. Not one of the participants involved, however, disputes that the suit is one of the most brutal legal battles they’ve been involved in. For four years, the two sides have traded vicious jabs. So far, ADT and Ajamie have landed the biggest punch: a \$36 million win last fall under the Racketeer Influenced and Corrupt Organizations Act that was trebled to \$108 million. With interest, the final judgment entered into by Texas state court judge Raul Vasquez—\$112 million—was a record for Webb County.

But it didn’t come without a price. ADT was stung with a \$9 million judgment in a counterclaim at trial last fall.

The case is still a long way from being resolved. Alcocer’s Texas lawyers have vowed to appeal the RICO verdict, which they say will undoubtedly be thrown out. If ADT wants to send a message, it’s going to have to go the distance.

## ADT’s

*program with its Mexico City* dealers began in 1999. For every customer that an authorized dealer signed up for ADT services, the security company gave that dealer an \$800 commission. The dealers paid for the security alarm equipment and installed it in the customer’s home. ADT provided the security services and collected a monthly subscription fee.

Nearly three years into the program, ADT executives had become concerned about the creditworthiness of the dealers’ customers, according to court records. More and more customers were not able to pay for the service. In August 2002 ADT informed 70 out of about 110 of its authorized dealers that the company was terminating its agreement with them. (The dealer program’s accounting practices later came under scrutiny by the Securities and Exchange Commission, which fined Tyco \$50 million.)

It was especially bad timing for some of the dealers, say lawyers for Alcocer. Under the pro-

gram, dealers were entitled to a bonus payment, if the customers they signed up renewed their service with ADT after three years. Some of the dealers were also owed money for customer contracts they had sold to ADT in the past quarter. Now the dealers weren’t going to receive anything, and the thousands of workers employed by the dealers were out of a job.

But ADT’s break with the dealers was more than just bad timing. According to the dealers, the termination was illegal. The contract between the dealers and ADT specifically prohibited termination without warning.

After being terminated, the dealers also took the position that they were the owners of the security equipment—which they had paid for and installed in customers’ homes—and that ADT was illegally profiting from the equipment.

A classic contract dispute took shape: ADT argued that the equipment belonged to the customers. The dealers said that it belonged to them. Eventually both sides entered into arbitration proceedings as required by their agreements to settle that question and others. (Details of those proceedings are confidential.)

But that wasn’t the end of it. It quickly became clear that the stakes were higher than just a civil judgment.

## In

**August 2002**, shortly after the dealers learned that they had been terminated, Alcocer testified that he ran into an old friend at an upscale English restaurant in Mexico City called Sir Winston Churchill’s. Alcocer’s

pal—a former senior general of the Mexican army named Luis Montiel Lopez—explained that his son was one of the fired ADT dealers. The general wanted to know if Alcocer could help his son out.

In his deposition, Alcocer said he assured the general that he would take care of it. And according to ADT, that’s when the conspiracy against the security company was hatched. ADT alleges that a company controlled by Alcocer purchased the rights to the ADT equipment directly from many of the dealers. Then Alcocer and his associates allegedly persuaded the Mexican criminal courts to issue arrest warrants against 11 ADT executives. Their alleged crimes related to the “theft” of security equipment that remained in ADT subscribers’ homes.

The first arrest warrants, issued in March 2003, targeted Phillip McVey, the president of Tyco Fire & Security Latin America and Patricio Gonzalez, the ADT manager responsible for the dealer program in Mexico. ADT, which had been caught by surprise by the warrants, immediately arranged for McVey and Gonzalez to fly out of Mexico to avoid incarceration. “I had to flee the country with the clothes on my back,” McVey testified in the Texas case.

Dario Santana, McVey’s successor, who oper-



*Jury members referred to Alcocer as “The Godfather.”*





ated from Boca Raton, Florida, was also targeted in December 2005, shortly before he was scheduled to travel to Mexico. “I changed my plans at the last minute, as I often did, because I—we were all concerned about these kinds of tactics, and I often changed my plans,” he said in his deposition.

Juan Reyes, the general director of ADT Mexico, was not as lucky as Santana or McVey. In a moving deposition, Reyes testified that on December 30, 2005, he was returning to Mexico City from a trip to Europe. As soon as he exited the plane, a gaggle of policemen were asking passengers for identification. When Reyes showed them his passport, one of them said, “We’ve got him.”

“I was impressed by the police apparatus that greeted me,” Reyes testified. “I thought they were arresting some kind of narco-trafficker or something like that.”

After the police apprehended Reyes, they took him to a restaurant called La Mansion. Inside, Alcocer was waiting at a table for him. According to Reyes, Alcocer told him not to worry. Nothing would happen to him—just so long as he told the truth to the Mexican authorities about who owned the equipment.

Reyes was then transported to a prison in Lerma, Mexico, where he spent the next four-and-a-half days. The ADT executive described being stripped of his clothes and put in handcuffs. “It was the most terrible thing I’ve lived through,” Reyes said at his deposition.

## Even

*though it’s a bit jarring* to Americans, there’s nothing improper about private citizens or companies initiating complaints in Mexico against their adver-

saries in civil disputes. What’s more jarring is the stunning lack of protection from false accusations. After complaints are filed with the government, a clerk investigates the facts. But according to Octavio Rodriguez, a Mexican lawyer and visiting fellow at San Diego University’s Trans-Border Institute, the facts can include statements from witnesses, which by law must be considered true for pretrial purposes. After a clerk reviews the allegations, he sends the file to a criminal judge, who decides whether or not to issue an arrest warrant.

It’s a system ripe for abuse. And it can be an especially tempting lever for parties in litigation. According to a 2008 article in *Business Insurance*, that was allegedly what happened two years ago when American International Group, Inc., was in a coverage dispute with TV Azteca, S.A. de C.V. The Mexican television network was targeted in a securities class action and a regulatory investigation. After AIG reportedly balked at paying an Azteca claim, one of the insurer’s top Mexican executives and one of its outside attorneys were arrested on fraud charges. Five days later, ac-

*ADT insisted that armed off-duty sheriffs guard its lawyers, including Tom Ajamie, during a three-week trial.*

## A ‘Very Happy, Fun Life’

When Thomas Ajamie began his career as a lawyer at Baker Botts in 1985, he didn’t plan on becoming a lifer. Ajamie, whose father built a pizza delivery business in Scottsdale, Arizona, always knew that he would go into business for himself one day.

That feeling was confirmed during a brief encounter with the famous Texas attorney Joe Jamail, who had teamed up with Baker Botts in the *Pennzoil v. Texaco* case in the mid-1980s. Ajamie, who was not working on the case, remembers waiting for an elevator inside the Baker Botts Houston office at lunchtime. When the door opened, it was packed with a group of seemingly cloned men, all wearing navy blue suits, white shirts, and red ties, with their heads bowed, looking tired and sad. In the middle of the crowd, there was a short man with a plaid jacket, blue shirt, and a yellow tie who was talking loudly, laughing and waving his hands wildly.

“It’s a moment I’ll never forget,” says Ajamie. “I thought, that guy is having a very happy, fun life. I want to be him. I don’t want to be sad, dour, and dread coming to work, and look 20 years older than I am.”

Ajamie didn’t choose the moment to leave Baker Botts more than the moment chose him. In the mid-1990s, he was working on a case for investors who had lost money in a Canadian gold mining company. When it became clear that his clients had a case against Lehman Brothers Holdings Inc.—whose analysts had issued glowing reports about the Canadian mining firm—Baker Botts management told Ajamie that he needed to cut his clients loose. The firm didn’t represent Lehman at the time, but it hoped to in the future.

Ajamie didn’t want to give up his clients, so he started to think seriously about leaving. He was more than ready. While many of his colleagues had bought shiny new BMWs and Benzes, Ajamie had held on to a Honda Civic, and rented a condominium in Houston for \$700 a month. By the time he left the firm in 1997, Ajamie, a bachelor, says he had seven figures saved up. A few of Baker Botts’s smaller clients had urged him to start his own firm. Before he left, Ajamie made sure they put in writing that they wanted their files to go with him. Three of them did.

Initially, Ajamie didn’t take anyone with him, not even his secretary. He had saved enough to cover his estimated costs for two years, but he knew that it would take a while for billings to come in the door, and he wanted to make sure that the work and money was there.

He didn’t have to wait long. He says that it took nine months to make a profit. Ever since, he has feasted well on a steady diet of complex commercial litigation for clients of all sizes, including corporations, such as Tyco International Ltd., Dell Inc., and E.I. du Pont de Nemours and Company. Ajamie says he regularly takes on nonhourly cases, but he limits them to no more than 25 percent of his total matters. In over 13 years, Ajamie LLP has grown to only eight lawyers and two contract attorneys.

“I guess we could make more money,” he says. “But there would be more headaches. I like being small.” —A.L.

cording to *Business Insurance*, AIG settled the coverage dispute in exchange for the two men's release from prison. (AIG and TV Azteca did not respond to requests for comment.)

Craig Lawrence, one of Alcocer's Laredo, Texas-based attorneys, acknowledges that abuses in the Mexican criminal justice system occur. But "that's not what happened here," he says. The complaints against ADT executives, says Lawrence, were legitimate.

ADT disagreed and went on a counteroffensive. The security company filed its own criminal complaints in Mexico against at least five individuals, according to Alcocer's lawyers, for their involvement in the ADT executives' arrests. Two men—including one whom ADT had recognized in 2001 as its largest dealer in the world, and another man, a lawyer for the dealers—were arrested and spent more than 80 days in jail, where, according to Alcocer's lawyers, the men were abused. The charges against the pair were eventually tossed.

ADT also says it rebuffed Alcocer's attempt at settling the dispute. In 2004 Alcocer had met with an ADT executive in Florida in an effort to resolve the issues between the company and the more than two dozen dealers he represented. But nothing came of it. According to Alcocer, ADT calculated that it was cheaper to sue him than to pay for use of the equipment. The legal actions against him, Alcocer says, were a way to pressure him.

The first action against Alcocer and various dealers was filed in 2004 by Tyco Fire & Security, LLC. But the suit—filed in West Palm Beach federal district court by attorneys at Boies, Schiller & Flexner—was dismissed in October 2005 on *forum non conveniens* grounds. (The U.S. Court of Appeals for the Eleventh Circuit reversed the district court, but the case has since been stayed pending resolution of the Texas litigation.)

In the early part of 2006, Ajamie was in the middle of a trial in Galveston, Texas, when he received a call from an in-house attorney in charge of the Latin American operations at Tyco International. Ajamie had previously been invited to pitch for the sprawling conglomerate's business, but he'd never been hired. Now an executive wanted to hear Ajamie's thoughts about the company's legal problems in Mexico.

Ajamie, a former Baker Botts partner turned solo practitioner, had experience with dangerous international cases. As a young lawyer in the 1990s, he was in Jakarta, Indonesia, investigating a gold-mining scandal when two unidentified men knocked on his hotel room door and told him to exit the country or risk being killed. Instead of booking the first flight home, Ajamie checked into a hotel across town under a pseudonym and stayed for another week.

Ajamie was more than willing to insert himself into ADT's Mexican dispute. And he was confident that he could establish enough of a U.S. connection to the case to overcome a *forum non conveniens* defense. "Everyone with substantial means outside the United States has some U.S. contact," says Ajamie. "That's a general rule. Anyone of any substance. They have some money or family here or travel here."

The man of substance in this case was Alcocer. He had been named in the first complaint filed in Florida. But a more detailed yet

enigmatic profile began to emerge after discovery and depositions. Ajamie learned that Alcocer often carried a worn and tabbed copy of the Mexican civil code and once worked in the Mexican Justice Department, but he wasn't a practicing attorney. Alcocer had sold a hotel in Acapulco in 1994, but he no longer had any assets; he said in a deposition that he'd transferred all of his money to his sons years ago. His family paid for his living expenses, which included bodyguards and lawyers, and a lifestyle that included several cars—including a Mercedes and a BMW—and eight or ten cell phones.

What did Alcocer do for a living? At a deposition he testified that he was retired, but that he still advised a select group of clients, whom he refused to name. "When someone, some people, some companies has [sic] any type of problem, they come to me and ask me to help them or to handle the matter for them," said Alcocer in a deposition.

The most important thing Ajamie learned was that Alcocer had connections to a Dallas limited liability company called Alert 24, LLC, and a Tucson citizen named Adelina Federico. After investigating for five months, Ajamie was able to determine that Alert 24 had signed some of the criminal complaints against ADT executives and that the president of Alert 24 was Federico, who had served as a tutor to Alcocer's children. Ajamie also discovered that Alcocer was the legal representative of a Mexican firm called Multidisciplinary Associates, a collection of lawyers who drafted some of the criminal complaints. It was Ajamie's argument throughout the case that Alcocer had used Federico, Alert 24, and Multidisciplinary Associates—also named defendants—to hide his involvement in the ADT executives' arrests. Ajamie also learned that Alert 24 had paid the dealers for "ownership" of the security equipment that was in the homes of many ADT subscribers. In total, Alert 24 allegedly purchased more than 160,000 pieces of equipment from 33 dealers.

Alcocer testified that Alert 24 had wanted ADT to allow another security company to monitor the signals coming from the disputed equipment. While ADT alleged that Alcocer's play was an extortion attempt, Alcocer's side said that he was standing up to a corporation that had treated the dealers unfairly. "He's a guy in a white cap trying to right a wrong," says Marcel Notzon III.

*In*

**Notzon, Alcocer** picked a well-known attorney in Laredo. Notzon's father was a respected federal magistrate judge in town, and his sister-in-law, Monica Zapata Notzon, a civil attorney and former prosecutor, recently won the Democratic primary for Webb County's 111th District Court judge. After stints at a firm in the Rio Grande Valley and as an attorney for the Internal Revenue Service, Notzon set up his own shop in Laredo.

But Alcocer got more than just a lawyer familiar with the Laredo legal scene. He had retained a pit bull who would never tire of pursuing ADT and the injustice he believes it perpetrated on the dealers. When Notzon talks about the case, he curses and pounds the table and looks as if he might jump out of his chair. "I'm so passionate because [ADT] distorts the truth," says Notzon.

*Last*

*fall, when Ajamie* and his colleagues moved into the Embassy Suites hotel in Laredo for the trial, they were guarded by three off-duty sheriffs carrying guns. ADT insisted on the protection.

Alcocer was still making ADT executives nervous up until the trial. Judge Vasquez granted a motion for sanctions—finding that Alcocer had filed criminal complaints against ADT’s witnesses in Mexico while the case was pending.

But the trial went off without incident. More than half of the Mexico dealers came to the opening arguments. However, many of them dispersed after the first day, perhaps frustrated with the pace of justice. For those that stuck around, it was a big disappointment. Over the three-week trial, the jury never warmed up to Alcocer. Although he was dressed conservatively in dark suits, he didn’t appear to the jurors to be a man “trying to right a wrong.” According to Gilberto Molina, Jr., the foreman, some of the jury members took to calling Alcocer “The Godfather.” Molina says: “He was kind of . . . I don’t want to say arrogant, but kind of like ‘you can’t touch me.’ He’s used to being in power. And we were like, ‘Nah, nah, you’re in the U.S. now. You don’t control us.’”

On the stand, Alcocer testified that his involvement in the criminal complaints filed against the ADT executives was limited. He simply instructed lawyers to investigate and follow through with a case if a crime had been committed. Alcocer said that he didn’t file any of the complaints.

But the jury concluded that he was, in fact, responsible for the

complaints. Molina says he was impressed with a presentation made by Ajamie’s local counsel—John Kazen of Kazen, Meurer & Pérez—who drew what looked like a wheel with spokes that pointed toward people or firms connected to the criminal filings. At the center of the wheel were the initials JHA. “Everything pointed to him,” says Molina.

Still, the jury didn’t find ADT a blameless victim. It awarded Alert 24 \$7 million—which was increased to \$9 million after adding interest—on a counterclaim that ADT had used its equipment without paying for it. The award was for the roughly 8,000 pieces of equipment that Judge Vasquez found that Alert 24 owned. If Alcocer’s lawyers can convince

*Defendant Alcocer “is a man in a white cap trying to right a wrong,” says his lawyer.*

an appeals court that Alert 24 owns the 167,000 pieces of equipment it claims to have bought, ADT’s liability could increase dramatically. “The appeals process represents dangerous waters for ADT,” says Notzon.

Even if ADT’s \$112 million award is upheld on appeal, it will then have to find a way to enforce the judgment. Alcocer says that he has no assets. In other words, Round Two has just begun.

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