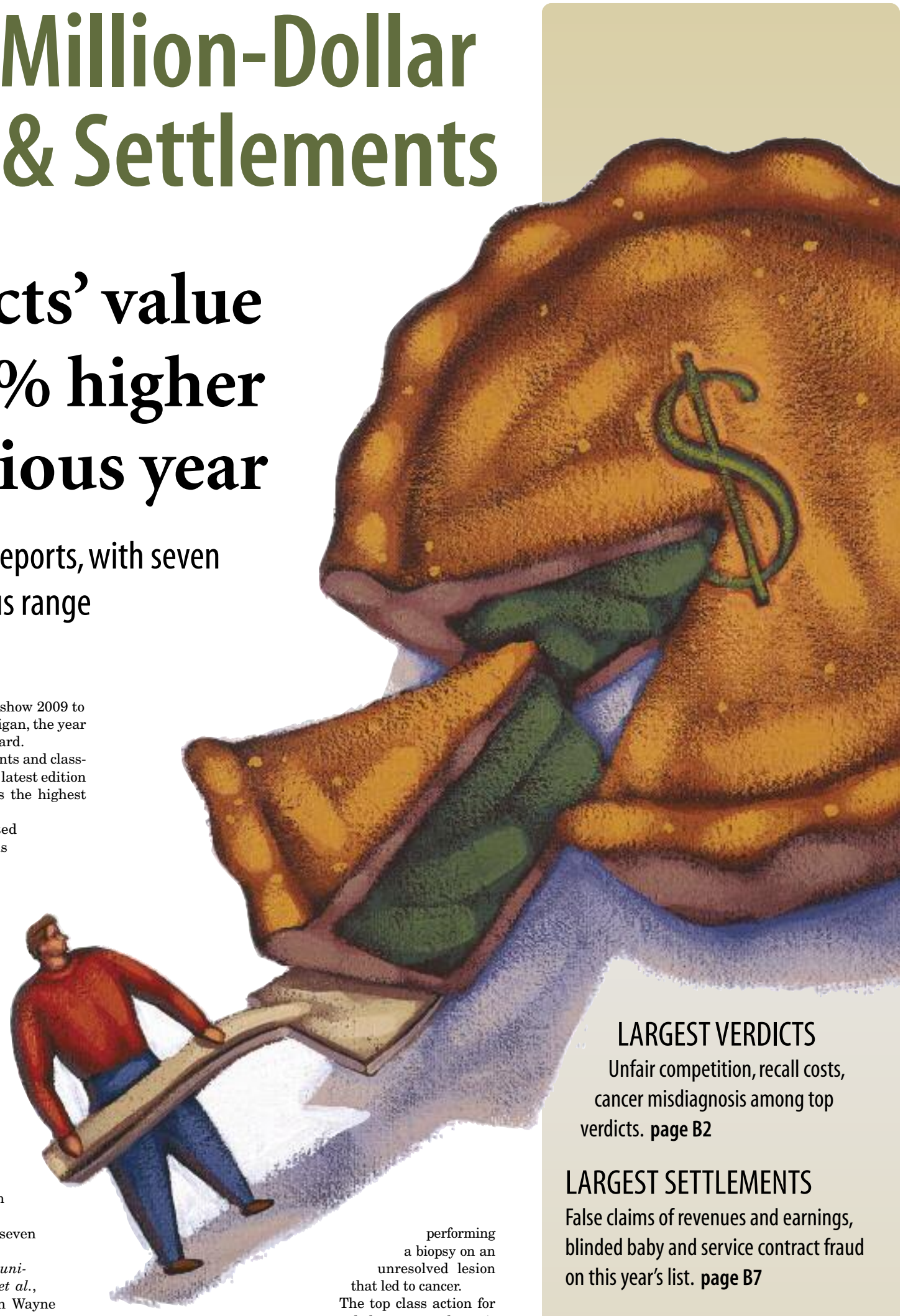
MICHIGAN LAWYERS WEEKLY

2009 Million-Dollar Verdicts & Settlements

Top verdicts' value zooms 85% higher than previous year

Big boost in number of reports, with seven cases in eight-figure-plus range



By Douglas J. Levy

Though economic and employment figures show 2009 to be one of the worst years for the state of Michigan, the year had significantly large figures in another regard.

The number of submitted verdicts, settlements and class-action lawsuits in *Michigan Lawyers Weekly*'s latest edition of "Million-Dollar Verdicts & Settlements" is the highest among the past five years' editions.

As an example, there were 20 submitted million-dollar verdict reports for jury trials that happened last year. That's a 30 percent increase from the 14 in 2008.

And of those verdicts, the highest reported was $300 million, followed by two eight-figure verdicts. By comparison, the top verdict in 2008 was $9.1 million — a difference of 97 percent.

The verdict awards in 2009 totaled more than $415 million, which is 85 percent higher than the 2008 figure of $63 million.

In the settlements section, 2009's reports totaled 31, reflecting a 42 percent difference to 18 in 2008. The monetary total was more than $62.2 million, which was 52 percent higher than the $30 million posted in 2008.

And 2009's seven class-action lawsuits added up to $155.4 million, which is 79 percent higher than the $34 million garnered from 2008's three class-action suits.

Of the 58 total reports for 2009, there were seven that boasted eight-figure-plus amounts.

The No. 1 jury verdict was *Valassis Communications, Inc. v. News America Incorporated, et al.*, which resulted in the largest jury award in Wayne County Circuit Court history.

It involved Livonia-based Valassis Communications' assertions that, over a six-year period, News America Marketing, one of News America Inc.'s subsidiaries, tried to monopolize the free-standing coupon insert (FSI) market.

Valassis contended that, by 2006, NAM had more than 60 percent of the FSI market, and did so by illegally bundling deals on its FSIs with its other consumer marketing division, in-store and point-of-purchase media. The jury agreed, and returned a $300 million verdict.

Though the defendant indicated it will appeal, the matter will continue in 2010 by way of another case. On Feb. 2, in U.S. District Court, Eastern District of Michigan, another trial will take place, where Valassis will assert NAM violated the Sherman Act, and any award in Valassis' favor can be trebled.

In the second-highest verdict, *Hutchinson FTS, Inc. v. Chrysler LLC*, had an Oakland County Circuit Court jury awarding $47.68 million to Chrysler. The countersuit figure reflected 80 percent of the costs associated with two massive recalls that stemmed from defective parts supplied by Troy-based auto vendor Hutchinson FTS. Hutchinson had its breach-of-contract claims denied.

And the third-highest verdict, for $15 million, also was the top medical-malpractice lawsuit. In *Hopton, et al., v. Maly, et al.*, the plaintiff asserted the defendants were negligent for not performing a biopsy on an unresolved lesion that led to cancer.

The top class action for 2009 ended a 13-year lawsuit involving 500-plus Michigan female inmates claiming sexual assault and harassment by male prison guards at various women's prisons.

As part of the agreement, the plaintiffs in *Neal, et al., v. Michigan Department of Corrections, et al.*, will receive 67 percent of their $15.6 million jury award, while the *Anderson, et al., v. Michigan Department of Corrections, et al.*, plaintiffs will receive 65 percent of their $8.4 million award from 2008. In addition, plaintiffs in two satellite suits will receive funds.

If the State of Michigan hadn't agreed to a $100 million settlement to end the lawsuits, which would have had plaintiffs with outstanding claims tried in groups of no more than 10 plaintiffs at a time, the class action could have gone on another eight to 10 years and cost the state in excess of $1 billion.

The top three settlements were a medical-malpractice suit where a baby was blinded when the mother tested positive for G. vaginalis ($7.53 million); a confidential breach-of-contract suit ($3.25 million); and a hypoxic ischemic brain injury stemming from an unapproved epidural and delayed resuscitation ($3.045 million).

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If you would like to comment on this story, please contact Douglas J. Levy at (248) 865-3107 or douglas.levy@mi.lawyersweekly.com.

LARGEST VERDICTS

Unfair competition, recall costs, cancer misdiagnosis among top verdicts. **page B2**

LARGEST SETTLEMENTS

False claims of revenues and earnings, blinded baby and service contract fraud on this year's list. **page B7**

CLASS ACTIONS

Prisoner sex abuse, landfill odors, financial coverup top this year's list. **page B14**

NATIONAL VERDICTS

Former Guess Jeans employees awarded $370 million. **page B16**

ABOUT THIS SECTION

This section includes verdicts and settlements of $1 million or more obtained in 2009 that were reported to *Michigan Lawyers Weekly* and verified before Dec. 28, 2009.

We would like to thank the attorneys who submitted their reports to *Lawyers Weekly* throughout 2009. While many of these reports were published in the "Verdicts & Settlements" section of the newspaper, others appear in this section for the first time.

Lawyers Weekly acknowledges that there have been other verdicts and settlements of $1 million-plus reached in 2009. This section, however, includes only those verdicts and settlements properly reported to us and verified by deadline.

If your verdict or settlement that was properly reported with all required information was mistakenly omitted from this list, please contact Douglas J. Levy at (248) 865-3107 or douglas.levy@mi.lawyersweekly.com.

LARGEST VERDICTS

#1

Insert company claims unfair competition

Livonia group says rival firm pressured clients to buy illegal package deals

$300 million

In a lawsuit filed in Wayne County Circuit Court, plaintiff Valassis Communications, Inc. asserted that defendant News America Marketing (NAM), a subsidiary of defendant News America Inc., engaged in unfair competition and tortious interference, and attempted to monopolize the free-standing insert market.

Livonia-based Valassis and New York-based NAM are the United States' sole marketing companies for the free-standing insert (FSI) business, which produces and distributes consumer coupon inserts in newspapers. From 2000-01, each company held approximately 50 percent of the FSI market.

Valassis, however, contended that by 2006, NAM had more than 60 percent of the FSI market, and did so by illegally bundling deals on its FSIs with its other consumer marketing division, in-store and point-of-purchase media.

By doing so, it was asserted, NAM would penalize its clients on price for in-store media when the clients didn't also buy space in the company's FSIs, opting instead to use Valassis.

As a result, Valassis said its revenue and market share decreased because of lost competition. Further, Valassis said, NAM coerced customers with unfair pricing or possible exclusion from in-store marketing, a sector in which NAM had near dominance.

Executives from various package-goods-marketing companies testified that, in some cases, their in-store-advertising prices with NAM went up by millions of dollars after they ended newspaper-insert deals with the company.

Besides paper and electronic documents, video footage of NAM officers and employees also was presented, in which statements were made over the years that were relevant to Valassis' claims.

In particular, two speeches had NAM officials talking about sending Valassis to the "brink of utter desperation," and one speech, taken near the end of 2006, saying that the company had succeeded.

After approximately one day of deliberation, the jury returned a $300 million compensatory damages verdict in Valassis' favor.

Two other lawsuits against NAM are pending in the U.S. District Court, Eastern District of Michigan, asserting violations of the Sherman Act; and in the Supreme Court of the State of California for the County of Los Angeles, raising claims under California's Cartwright, Unfair Competition and Unfair Practices Acts.

Type of action: Unfair competition, tortious interference

Type of injuries: Lost business

Name of case: *Valassis Communications, Inc. v. News America Incorporated, et al.*

Court/Case no./Date: Wayne County Circuit Court; 07-706645-CZ; July 23, 2009

Tried before: Jury

Name of judge: Michael F. Sapala

Demand: $915 million

Verdict amount: $300 million

Attorneys for plaintiff: Gregory L. Curtner, David S. Mendelson, Michael Palizzi, Kimberly L. Scott, Henry Baskin

Attorney(s) for defendant: Withheld

Status: Defendant filed motion not withstanding verdict and motion for new trial; court denied both motions, and defendant has indicated it will appeal. Federal trial scheduled for Feb. 2 in U.S. District Court, Eastern District of Michigan, in asserting violations of the Sherman Act.

#2

Auto supplier must pay 80% of cost of recall

Contract stated vendor would pay majority if parts are found faulty

$47.68 million

In this breach-of-contract dispute, plaintiff Hutchinson FTS, Inc., a Troy-based auto supplier, sued defendant Chrysler LLC, asserting the automaker wrongfully withheld $29 million in payments for components that Hutchinson had produced.

Chrysler countersued, asserting breach of contract and breach of warranty because the vendor supplied defective parts, and demanded 80 percent of the costs associated with two massive recalls.

Hutchinson had provided Chrysler with hoses and cooling-line systems for the automaker's 2001-04 models in the RS minivan line. For the 2005 RS model line, the system had to be modified, as the line was the first to implement the "Stow and Go" seating system and required a different path configuration.

It was discovered in 2005 that a heater hose leaked at a joint, there was a coolant leak at a blocked tube connection located in the rear wheel well that serviced the rear air conditioning, and there was a potential insipient leak near the engine compartment.

Chrysler concluded that the best and most cost efficient way to repair the leaks was to replace the entire assembly. In 2006, the automaker launched two recalls for 425,000 minivans, with entire underbodies replaced in regions where corrosive salt was used in the winter, and hoses and joints replaced on affected minivans in other states.

Doug Doran, Chrysler's director of purchasing, and Larry Sak, Chrysler's director of warranty and recall matters, affirmed the move, asserting the automaker acted reasonably in recalling the parts before they broke down as opposed to fixing them once they failed.

Chrysler asserted that in the "Authority Definition Plan" guidelines of its agreement with Hutchinson, in the event of parts failing in the field, the auto supplier would be 80 percent liable for the costs and Chrysler for 20 percent. Hutchinson denied this, claiming at first there was no such clause in the agreement, then said the company would be responsible for no more than 65 percent of costs.

Bruno Petit, Hutchinson's president and CEO, testified that the recalls were not necessary, and that owners of the affected minivans instead should bring the automobiles in for warranty work once leakage is detected.

A unanimous jury found for Chrysler and awarded $47.68 million, which, as stipulated by the contract, was 80 percent of the estimated minimum recall figure. Hutchinson's claims were denied.

Type of action: Breach of contract

Type of injuries: Money damages from massive recall

Name of case: *Hutchinson FTS, Inc. v. Chrysler LLC*

Court/Case no./Date: Oakland County Circuit Court; 2007-080008-CK; April 10, 2009

Tried before: Jury

Name of judge: Steven Andrews

Verdict amount: $47.68 million

Attorneys for plaintiff: James P. Feeney, Thomas J. Murray, Jeffrey R. Miller

Attorney for defendant: Withheld

Status: Case settled.

FEENEY

MURRAY

MILLER

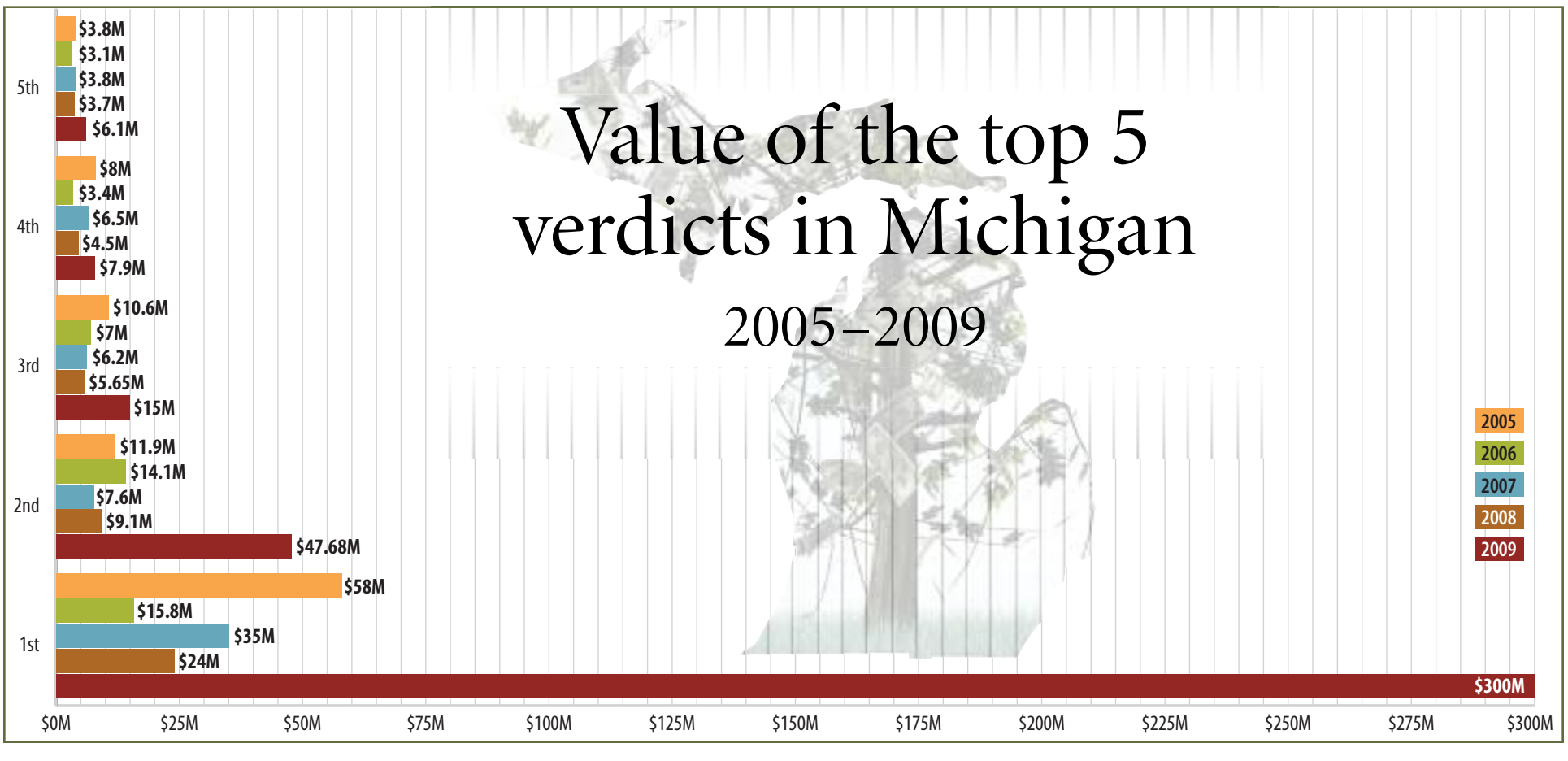
#3

Patient gets cancer after lesion is misdiagnosed

Biopsy not ordered until 15 months after she first presented with jaw pain

$15,044,750.15

In a medical malpractice lawsuit filed in Oakland County Circuit Court, plaintiff Herta Hopton asserted that defendant periodontist Dr. John F. Sivertson and defendant Dr. Warren Vallerand were negligent for not diagnosing a lesion that led to cancer.




GITTLEMAN

Also, co-plaintiff Blue Cross Blue Shield of Michigan sued for the resulting cancer surgeries and treatment.

In August 2005, Hopton experienced intermittent, unexplained pain in her lower right jaw, not localized to a tooth. The pain continued, and in February 2006, three lower anterior teeth became loose.

Hopton's dentist, Dr. R. Peter Maly, referred her to Sivertson, with a tentative diagnosis of acute periodontal abscess as cause for the loose teeth. Sivertson recommended extraction, followed by a bridge.

He also discovered something on the anterior floor of the mouth that he diagnosed as aspirin burn, but was actually a leukoplakia-type, precancerous white lesion. Periodontal scaling, root planing and gingivectomies proceeded.

Maly extracted the three teeth and the white lesion was believed to have cleared up. However, in May 2006, Sivertson charted a new lesion 10-15 mm away from the site of the first one. Clindomyacin was prescribed, but the lesion persisted, and Hopton was referred to Vallerand for evaluation and possible biopsy.

Vallerand's differential diagnosis was traumatic injury from temporary bridge or tongue fussing, not dysplasia or neoplasm, and a biopsy was not recommended or ordered.

Six weeks later, Vallerand diagnosed the lesion as healing, but slower than expected, and lower right tooth 27 was now tender. A biopsy was not ordered for this. In August 2006, a new lesion was observed, and a biopsy was not ordered.

On Sept. 11, 2006, Vallerand charted the lesion as healed, and Hopton underwent endodontic evaluation of new tenderness at tooth 29. A biopsy was not ordered, and any follow-up treatment would be at Maly's discretion.

On Nov. 27, 2006, Hopton returned to Vallerand as an emergency pain patient, and a large, invasive leukoplakia lesion was charted in the same area of previous lesions. A biopsy was performed, and the pathologist confirmed invasive squamous cell cancer. Multiple extensive excision, revision and reconstruction surgeries followed, as the cancer advanced to Stage IV.

Plaintiff asserted that, should a patient present him- or herself at a physician's office with an unresolved lesion that has persisted beyond two weeks, a biopsy must be performed to rule out cancer, as it is the sole, definitive procedure for cancer diagnosis. Therefore, the defendants were negligent for not performing a biopsy.

The defendants contended that the plaintiff was examined consistently on every visit, and a biopsy was not indicated or recommended based on what was discovered.

The jury found Vallerand to be fully at fault, and returned a $15,044,750.15 verdict.

Type of action: Medical malpractice resulting from misdiagnosis

Type of injuries: Subsequent cancer treatment, extensive oral surgeries

Name of case: *Hopton, et al., v. Maly, et al.*

Court/Case no./Date: Oakland County Circuit Court; 07-085271-NH, 08/088350-NH; Aug. 27, 2009

Tried before: Jury

Name of judge: Steven A. Andrews

Verdict amount: $15,044,750.15

Attorneys for plaintiff: Robert Gittleman, Gary L. Schmalzreid

Attorney(s) for defendant: Withheld

Status: Case closed.

#4

Telecom firm asserts breach of contract

Contract's mutual waiver agreement breached, resulting in jury verdict

$7,994,590

In a breach-of-contract lawsuit filed in Ingham County Circuit Court, plaintiff ACD Telecom, Inc. asserted defendant Michigan Bell Telephone Co., doing business as AT&T Michigan, refused to honor a mutual waiver agreement (MWA), resulting in lost profits.

In 2003 AT&T offered to enter into an MWA with Michigan competitive local exchange companies, under which the parties agreed that they would not charge termination charges when one company won over contract customers in term contracts from the other company.

ACD entered into an MWA with AT&T on April 13, 2003, and primarily targeted Internet service providers (ISPs) who were using a product called "ISDN Prime" to obtain local telephone service for dial-up Internet customers.

Absolute Internet and ARQ Internet were two customers that switched from AT&T to ACD under the MWA. However, AT&T refused to honor those switches, and ACD ceased its marketing efforts under the MWA.

ACD and other plaintiffs filed suit against AT&T in Ingham County Circuit Court in 2004, alleging breach of the MWA. In 2006, the court granted AT&T summary disposition and ACD's claims were dismissed. AT&T settled with other parties, but ACD was the only plaintiff that appealed the summary disposition order.

The Michigan Court of Appeals reversed the lower court decision, holding that the MWA was ambiguous, and that what constituted either an "end user" or "local exchange service" was an issue of fact for the jury to decide. The case was remanded for trial.

Plaintiff's experts in the 2009 trial testified that ISDN Prime was recognized throughout the industry to be a local exchange service, and that ISPs were treated as end users under the law and in the industry.

Other experts asserted that the lost profit ACD experienced was $21,607 per ISDN Prime circuit, and that ACD would have obtained 370 ISDN Prime circuits if AT&T had not breached the contract.

The defendant's experts testified that the term "local exchange service" meant the same thing as "basic local exchange service," because the Michigan Telecommunications Act provided that either of these terms meant the provision of high-quality two-way switched local access for voice or data communications.

Also, it was contended, ISPs were not end users because they provided customers with access to the Internet.

However, on cross-examination, an expert admitted that the MWA did not include the word "basic." He also agreed that, although under the Michigan Telecommunications Act, both local exchange service and basic local exchange service, by definition, shared a certain set of characteristics, this did not mean that they could have other characteristics not identified in the definition that were different from one another.

After three hours of deliberation, the jury found for the plaintiff and awarded $7,994,590 in lost-profit damages.

Type of action: Breach of contract

Type of injuries: Lost profits

Name of case: *ACD Telecom, Inc., et al., v. Michigan Bell Telephone Company, d/b/a AT&T Michigan*

Court/Case no./Date: Ingham County Circuit Court; 04-689-CK; Oct. 15, 2009

Tried before: Jury

Name of judge: Joyce A. Draganchuk

Highest offer: $400,000

Verdict amount: $7,994,590

Most helpful experts: Joseph Gillan, Huson, Mont.; August H. Ankum, Ph.D., Philadelphia; James D. Webber, Naperville, Ill.

Attorneys for plaintiff: Norman C. Witte, Gary L. Field

Attorney(s) for defendant: Withheld

Status: Defendants filed motion for new trial and reduced verdict; plaintiffs filed motion for case evaluation sanctions.

#5

School must pay for unauthorized testing

Jury: University willfully infringed on patent for exclusive machine

$6.1 million


KOCHANOWSKI

In this patent infringement and breach of contract lawsuit filed in U.S. District Court, Western District of Michigan, plaintiff Baum Research and Development Co., Inc. asserted that defendant University of Massachusetts at Lowell (UMass) broke the license agreement to an exclusive patented baseball speed-and-impact measuring machine.

In December 1998, Traverse City-based Baum licensed the Baum Hitting Machine to UMass for use in the school's Baseball Research Center. The agreement did not allow for commercial tests or modifying the machine.

However, in late 1999, the plaintiff contended that UMass breached the agreement when bat manufacturers paid the university to use the machine for testing and retesting aluminum bats in order to meet Ball Exit Speed Ratio (BESR) standards.

Baum terminated the agreement in January 2000 and ordered UMass to stop the tests. UMass refused, and Baum sued in 2002.

In September 2005, a U.S. District Court, Western District of Michigan jury found for Baum and awarded $2.5 million in lost-profit damages for the breach. However, U.S. Magistrate Judge Ellen S. Carmody bifurcated the case so that only the contract infringement and liability aspects were recognized, but the damages would be retried along with patent infringement.

In the 2009 trial, the jury deliberated one half-day before finding UMass owed Baum damages and willfully infringed the claims of Baum's patent. Baum was awarded a $3.1 million patent-damages award, and a $3.016 million award for breach-of-contract damages.

Type of action: Patent infringement, breach of contract

Type of injuries: Loss of profit damages, termination of license agreement

Name of case: *Baum Research and Development Co., Inc., et al., v. University of Massachusetts at Lowell*

Court/Case no./Date: U.S. District Court, Western District of Michigan; 1:02-CV-00674; March 13, 2009

Tried before: Jury

Name of judge: Ellen S. Carmody

Verdict amount: $6.1 million

Special damages: Willful infringement

Most helpful experts: Hal Watson Jr., Ph.D., Dallas; Paul Taylor, Grand Rapids

Attorney for plaintiff: Andrew Kochanowski

Attorneys for defendant: Heidi E. Harvey, Craig R. Smith, Stephen S. Muhich

Status: Final judgment has been issued; no word on appeal.

#6

'Faithful performance' for loans claim argued

Rules ambiguous, says group, but VP's behavior is questioned

$5,050,000

In a lawsuit filed in U.S. District Court, Eastern District of Michigan, plaintiff Michigan First Credit Union asserted its insurer, defendant Cumis Insurance Society, Inc., failed to pay a $5 million claim under the insurance bond's "faithful performance" coverage.

Michigan First asserted that its former vice president of lending, and other employees under his direction, allowed some 1,600 indirect automobile loans to be made in conscious disregard of the credit union's lending policies. As a result, Michigan First suffered losses exceeding the bond's $5 million coverage limit.

Cumis contended that Michigan First's losses were the result of ambiguous lending policies; inadequate training and supervision; and a credit culture that encouraged high-risk loans. It was further asserted that the volume of loans at issue itself demonstrated an institutional failure, rather than an employee's conscious disregard of lending policy.

The plaintiff presented evidence of Michigan First's monitoring programs, such as regular loan audits, and the vice president of lending's interference with those functions in an effort to avoid disclosure of the high-risk auto loans.

Testimony also was taken from the lending policy's author, who had trained the vice president of lending on the application of the policy. Samples of the loans at issue were presented together with expert testimony on why each of the loans violated policy.

The jury found for the plaintiff and awarded $5,050,000.

Type of action: Breach of commercial insurance contract

Type of injuries: Economic damages from insurer's failure to pay insurance claim

Name of case: *Michigan First Credit Union v. Cumis Insurance Society, Inc.*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 2:05-CV-74423; Jan. 22, 2009

Tried before: Jury

Name of judge: George Caram Steeh

Highest offer: $200,000

Verdict amount: $5,050,000

Special damages: $2,730,415 penalty interest under the Michigan Unfair Trade Practices Act

Most helpful experts: Rex Johnson, Elgin, Ill.; Alex Yarber, Fenton

Attorneys for plaintiff: Don W. Blevins, Patricia D. Corkery

Attorney(s) for defendant: Withheld

Key to winning: Simplification of complex issues through extensive preparation and electronic evidence presentation

Status: Being appealed in 6th U.S. Circuit Court of Appeals.

#7

Disabled war veteran asserts workplace bullying, wins verdict

Co-workers, supervisor called him 'cripple,' refused accommodations

$4,388,302

In a lawsuit filed in U.S. District Court, Eastern District of Michigan, plaintiff James N. McKelvey asserted that he was subjected to verbal harassment, based upon his disability, while doing civilian Army work.

In February 2006, McKelvey, who had suffered physical impairments in Iraq during duty with the Army National Guard, commenced his civilian employment with the Army. One month in, he was subjected to verbal harassment based upon his disability.

Largest Verdicts continued on page B4

LARGEST VERDICTS

Continued from page B3

GOLDEN

CARLSON

Co-worker Bud Spaulding initiated the harassment during a lunch outing, when he asked McKelvey why he used "crippled parking." After that, McKelvey was called "cripple" on a regular basis, including by his supervisor, Alan Parks, who denied McKelvey's requests for accommodations such as a touch-screen laptop or voice-activated programming for his computer.

McKelvey asserted he was excluded from virtually every aspect of his own job by Parks, and was locked out of the supply closet and could not get basic office supplies for himself.

In May 2006, McKelvey met with the garrison commander, to raise his concerns about his working environment and other issues. When no actions were taken, McKelvey went to the Army EEO office, but the harassment continued. In December 2006, McKelvey filed a formal EEO complaint, and his performance review reflected the lowest scores in the garrison. McKelvey then submitted his resignation in February 2007.

Plaintiff's witnesses included a female former executive officer at the garrison, who testified that, upon meeting with Parks in her office, Parks called McKelvey a "worthless, good-for-nothing cripple."

Also, two visiting National Guard officers, when inquiring where McKelvey was, were told by McKelvey's coworkers, "So you know 'cripple' over there?" and, "We're just waiting on the cripple."

In defense testimony, Parks denied ever calling McKelvey a 'cripple,' nor had he ever heard anyone else call him that. Spaulding testified he could not recall anything related to use of the epithet on McKelvey.

The jury returned a $4,388,302 verdict.

Type of action: Hostile work environment in violation of Rehabilitation Act of 1973

Type of injuries: Economic and non-economic (past and future)

Name of case: *McKelvey v. Geren*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 5:07-CV-14538; Oct. 23, 2009

Name of judge: John Corbett O'Meara

Verdict amount: $4,388,302

Attorneys for plaintiff: Joseph A. Golden, Kevin M. Carlson

Attorney(s) for defendant: Withheld

Status: Post-trial motions filed and pending.

#8

Worker questions inequities, is fired

Woman says termination was in retaliation for her reporting

$4,229,500

In a lawsuit filed in Wayne County Circuit Court, plaintiff Donna Pope asserted she was wrongfully terminated by defendant Brinks Home Security Co., Inc. in retaliation for reporting the routine shorting of commissions.

She sought past and future lost commissions, as well as past and future pain and suffering.

Pope began employment at Brinks's sales division March 8, 2004, working solely on commission, as did other members of the sales staff.

She rose to the top tier of salespeople for the company, but noticed the commission amounts in her paychecks did not match the number of alarms she sold. She also discovered other employees were being shorted commissions.

On Jan. 22, 2007, she brought this to the attention of defendant Mark Falkiewicz, her supervisor, and was fired the next day.

The defendants contended that any errors in the commission amounts were corrected, and that plaintiff was given all money due and owing to her. Also, the defendants maintained that plaintiff was captured on video in the office after hours going through the office coordinator's personal property and engaging in other snooping.

The jury found for the plaintiff and awarded $4,229,500.

Type of action: Whistleblower retaliation, wrongful termination

Type of injuries: Lost commissions

Name of case: *Pope v. Brinks Home Security Co., Inc., et al.*

Court/Case no./Date: Wayne County Circuit Court; 07-707289-CD; April 27, 2009

Tried before: Jury

Name of judge: Jeanne Stempien

Demand: $1 million

Highest offer: $350,000

Verdict amount: $4,229,500

Attorney for plaintiff: Arnold E. Reed

Attorney(s) for defendant: Withheld

Status: Appeal is planned.

#9

Rent dispute leads to default, failed sale

Investment group entitled to strip mall after 3rd party pulls out of deal

$3,789,923

In this case filed in Livingston County Circuit Court, Hamilton Family Limited Partnership (HFLP) loaned money to BM Investments, LLC (BM) for the purchase of a strip mall, for which BM granted a commercial mortgage to HFLP.

One of BM's 50 percent owners leased 64 percent of the strip mall from BM through Xtreme Fitness, a corporation. Three of the strip mall's four tenants paid $18 per square foot in rent, but Xtreme Fitness claimed to owe only $1 per square foot in rental to BM.

A dispute arose between the co-owners of BM because Xtreme Fitness failed to pay reasonable rent to BM. After repeated failures to pay the mortgage, the owners of BM attempted to sell the strip mall and Xtreme Fitness attempted to sell its gym. In order to forestall foreclosure by HFLP, BM gave HFLP a deed for the strip mall to hold while it attempted to sell the strip mall, and Xtreme Fitness gave HFLP a chattel mortgage on its gym equipment.

An unnamed third party submitted an offer to purchase each of the two members' interests in BM for $3.1 million, subject to a due diligence inquiry. The members of BM accepted the offer.

After conducting the inquiry, the third party uncovered the delinquency in rent of Xtreme Fitness and revised its offer to require that $400,000 of the purchase price be escrowed to ensure Xtreme Fitness' payment of rent. BM's non-delinquent member refused the new offer, and the third party discontinued its attempts to purchase the strip mall.

BM's non-delinquent member told HFLP that the sale of the strip mall had fallen through, and HFLP recorded the deed and assumed ownership of the strip mall.

Another unnamed third party also submitted an offer to purchase the gym from Xtreme Fitness. Unable to reach an agreement to lease the space from HFLP, the third party failed to close on the purchase.

Xtreme Fitness then paid one rent payment to HFLP equal to $18 per square foot.

After several months passed without receiving additional rent from Xtreme Fitness, HFLP filed an action in Livingston County District Court to evict Xtreme Fitness. Xtreme Fitness and BM then filed an action in circuit court seeking to stay the eviction, and HFLP attempted to file a counterclaim in circuit court.

BM asserted that HFLP had wrongfully interfered with its sale to the third party. Xtreme Fitness asserted that HFLP had likewise interfered with its attempt to sell the gym to the third party. Xtreme Fitness and BM asserted damages that exceeded the amount of the mortgage.

Livingston County Circuit Court Judge Stanley J. Latreille stayed the eviction action and did not require Xtreme Fitness to pay rent into escrow awaiting trial. From the time the court stayed eviction until trial, Xtreme Fitness amassed more than $500,000 in unpaid rent.

Circuit Court Judge David J. Reader, who was reassigned to the case, denied leave to file a counterclaim to HFLP. HFLP then filed a separate action and moved for consolidation of the two cases, which Reader granted.

At trial, visiting Judge A. John Pikkarainen held that HFLP was entitled to ownership of the strip mall at the time it recorded the deed. HFLP was awarded the strip mall at a value of $3.1 million, and awarded BM its $100,842 equity in the strip mall. The court also awarded HFLP $125,273.05 for the mortgage given by Xtreme Fitness to HFLP, and $533,177 plus $31,473 statutory interest to HFLP for the unpaid rent against both Xtreme Fitness and Xtreme Fitness' owner.

A no cause of action ruling was given for BM and Xtreme Fitness' claims against HFLP.

Type of action: Breach of commercial mortgage, nonpayment of rent

Type of injuries: Money damages

Name of case: *Hamilton Family Limited Partnership, et al., v. BM Investments, LLC, et al.*

Court/Case no./Date: Livingston County Circuit Court; 06-22352-CH; Feb. 26, 2009

Tried before: Judge

Name of judge: A. John Pikkarainen

Verdict amount: $3,789,923

Attorney for plaintiff: J. Michael Southerland

Attorneys for defendant: Withheld

Key to winning: Showing that the borrower was doomed to default on the mortgage from the onset because of tenant's failure to pay rent

Status: Judgment remains unsatisfied, as defendant/counter-plaintiff went bankrupt.

#10

Granddaughter awarded after 7 years of abuse

Defendant was defaulted; trial for plaintiff's non-economic damages

$2,997,813

In a lawsuit filed in Kalamazoo County Circuit Court, the plaintiff sought non-economic damages from defendant Earl A. Courtney following a history of sexual assault.

The plaintiff was sexually abused for seven years by Courtney, her grandfather, starting at age 9 through spring 2007 when the abuse became known. The defendant admitted guilt in a criminal proceeding and was incarcerated.

In the civil case, defendant denied sexually abusing his granddaughter and tried to claim he was "railroaded" into a plea in the criminal matter. The defendant was defaulted for refusing to respond to discovery.

The non-economic trial was for damages only, with no defense presented.

In addressing whether the jury would understand the severity when there was no economic loss, as well as why plaintiff failed to report the incident during the years of abuse, expert testimony by the treating psychologist indicated that children often fail to report abuse.

The jury deliberated two hours before awarding the plaintiff $2,997,813, which included $600,000 in exemplary damages.

Type of action: Personal injury stemming from sexual assault

Type of injuries: Psychological and emotional trauma

Name of case: *Jane Doe v. Earl A. Courtney*

Court/Case no./Date: Kalamazoo County Circuit Court; D08-0155-NO; Aug. 3, 2009

Tried before: Jury

Name of judge: Alexander C. Lipsey

Verdict amount: $2,997,813

Attorney for plaintiff: James H. Koning

Attorney(s) for defendant: Withheld

Status: In collection stage.

#11

Delay in reading X-rays results in disfigurement

Procedure to remove cyst leads to abdominal hernia, myriad surgeries

$2,978,000

MAFRICE

In a medical malpractice lawsuit filed in Shiawassee County Circuit Court, plaintiff Sue Apsey contended that defendants Memorial Hospital, Dr. James H. Deering and Shiawassee Radiology Consultants, PC were negligent.

Defendants failed to timely review and report the results of a CT scan and small bowel X-ray series studies she claimed, resulting in multiple abdominal surgeries, abdominal hernia and disfigurement.

After undergoing an exploratory laparotomy, Apsey presented to Deering, who removed an ovarian cyst on Jan. 7, 2001. During post-operative care, Apsey was not recovering. At 3 p.m. Jan. 15, a small bowel series was ordered by Dr. Keith Morrow, and were finished at 8 a.m. Jan. 16.

The small bowel series X-rays revealed a bowel leak, but they weren't discovered until Jan. 17, a Monday. In the interim period, the barium that Apsey ingested to assist with the imaging seeped into the abdomen, causing an underlying bacterial peritonitis (inflammation in the abdomen) and chemical peritonitis.

As a result, Apsey underwent several follow-up surgeries, including two skin graft procedures that left her with a very large abdominal hernia and permanent disfiguring scars.

The plaintiff asserted that on Jan. 11, there was evidence that there was a bowel leak, and Deering should have recognized it at the time, but didn't.

Also, Morrow approved the small bowel series procedure, but never monitored it or looked at any of the X-rays when they were completed Jan. 16. Instead, it was discovered Jan. 17 by Dr. Russell Tobe, by which point there was significant damage from the potentially toxic metals in the barium.

The defense contended that reading the results of the small bowel series within 24 hours of its completion was standard care and routine within their policy. Also, the small bowel series was not marked as urgent or stat.

Further, radiologists could not interpret the results on Jan. 16, as it was a Sunday morning, and radiologists aren't on duty at the hospital for 24-hour shifts on weekends.

The jury found Shiawassee Radiology Consultants to be 100 percent liable, and awarded $2,978,000 to the plaintiff.

Type of action: Medical malpractice

Type of injuries: Multiple abdominal surgeries, abdominal hernia and disfigurement caused by delay in diagnosing bowel perforation

Name of case: *Apsey v. Memorial Hospital, et al.*

Court/Case no./Date: Shiawassee County Circuit Court; 01-7289-NH; May 29, 2009

Tried before: Jury

Name of judge: Gerald Lostracco

Verdict amount: $2,978,000

Special damages: $228,000 in medical expenses

Allocation of fault: 100 percent to Shiawassee Radiology Consultants, P.C.; zero percent to Dr. James Deering and Memorial Healthcare Center

Most helpful experts: Dr. Seth Glick, Philadelphia; Dr. Leonard Milewski, Rosemont, Pa.

Insurance carrier: ProNational

Attorney for plaintiff: Frank Mafrice

Attorney(s) for defendants: Withheld

Status: Case pending.

#12

Bar is primarily at fault in fatal accident case

Both negligence, dram shop claims asserted for club, patron's actions

$2,261,486

In a lawsuit filed in filed in Wayne County Circuit Court, the estate of plaintiff's decedent Kenneth Brzezinski sought compensatory damages from defendant Ross Enterprises, Inc. (doing business as the Pantheion Club) and defendant Ronnie S. Jackson following a drunken-driving accident.

On March 20, 2006, at 2:30 p.m., defendant Ronnie S. Jackson visited the Pantheion Club, a topless bar in Dearborn. He consumed several beers and a handful of test-tube shots and, at 5:52 p.m., passed out at a table in a pool of his own vomit.

The club's manager summoned the disc jockey to clean up the vomit and call a cab. However, after leaving Jackson passed out at a table for 50 minutes, the disc jockey and the 19-year-old valet roused Jackson from his stupor and escorted him to the front door, where the valet pulled his car up.

The disc jockey placed Mr. Jackson's coat and shoes, which he had left in the bar, in the front seat. Jackson left the bar at 6:50 p.m., drove three miles down Michigan Avenue at speeds estimated in excess of 80 miles per hour, and caused a nine-car pileup before rear-ending plaintiff's decedent Kenneth Brzezinski's 2005 Ford Escape at the intersection of Michigan Avenue and Oakwood Boulevard. The rear bumper of the Escape was crushed all the way to the level of the front seat, killing Brzezinski, 52, instantly.

The plaintiff, filing dram shop and negligence claims, pointed to surveillance cameras in the bar that captured Jackson's drinking and the subsequent actions of the disc jockey and valet after Jackson had passed out at a table. The video called into question the defendant's claim that a cab actually had been called.

While the video was critical to a clear understanding of the events of that afternoon, the club's general manager admitted on cross-examination at trial that once Jackson had passed out, he was helpless to help himself. The manager further admitted that the last, best opportunity to prevent the tragedy was the actions of the bar's employees.

Given the testimony of its employees and the evidence on the surveillance video, the defendant bar admitted liability as to both dram shop and negligence claims.

Plaintiff argued that once the bar manager called for a cab, because he knew that Jackson was too drunk to drive, the bar voluntarily assumed the duty independent of the furnishing or sale of alcohol. Once the timeline started with Jackson passing out at a table, the conduct of the bar was one of general negligence.

The defense for the club argued that the dram shop statute is the exclusive remedy for this type of case.

The jury rendered a verdict for the plaintiff's estate in the amount of $2,261,486, and found the club to be 80 percent at fault and Jackson to be 20 percent at fault.

Type of action: Dram shop, negligence

Type of injuries: Death

Name of case: *Brzezinski, et al., v. Ross Enterprises, Inc., et al.*

Court/Case no./Date: Wayne County Circuit Court; 06-620326-NI; Oct. 28, 2009

Tried before: Jury

Name of judge: John J. Murphy

Demand: $1,050,000

Highest offer: $400,000

Verdict amount: $2,261,486

Special damages: $11,486 for funeral and burial expenses

Allocation of fault: 80 percent Ross Enterprises, Inc.; 20 percent Ronnie S. Jackson

Insurance carrier: Badger Mutual

Attorney for plaintiff: Wolfgang Mueller

Attorney(s) for defendant: Withheld

Keys to winning: Surveillance video of defendant in bar and at front door while valet pulled up his car; establishing the significant loss of the three adult siblings where there was no spouse, children or economic loss

Status: Declaratory judgment action filed by defense counsel for defendant's carrier; defendant filing appeal.

#13

Fluid damaged cars, plaintiffs' reputations

Jury finds oil company was negligent by taking wait-and-see approach

$2,226,000

In a lawsuit filed in Jackson County Circuit Court, plaintiffs C-BAM Enterprises, Inc., MTDC Enterprises, Inc./Renco Transmissions, and Malco Automatic Transmissions, Inc. asserted that defendant Corrigan Oil Co. supplied substandard automatic transmission fluid (ATF) that resulted in damaged transmissions in customers' automobiles.

Throughout 2006, the plaintiffs experienced problems with repeated repairs and warranty claims on transmissions each had previously serviced.

C-BAM Enterprises, doing business as Gattshalls Transmission, became suspicious of the ATF when a transmission was rebuilt only weeks after doing a prior rebuild, and noticed venting and discolored ATF.

The ATF was tested, with the results showing extremely elevated levels of silicon and other contaminants. Renco and Malco conducted similar testing and received similar results.

The plaintiffs contacted the defendant, who advised that it had received similar complaints from other customers but had not identified the problem. Dwayne Janke of Corrigan was appointed to investigate and respond to the issues.

On Oct. 31, 2006, Corrigan drafted a letter advising its customers of the problems with the ATF and advising of a recall.

However, Corrigan never sent the letter because in early November, Janke met with Corrigan President Mike Corrigan, insurer AIG, and another Corrigan employee, Tony DeAngelis, at which time Corrigan decided to take no action regarding the ATF.

As attested by Janke, Corrigan adopted a "wait-and-see approach" toward the bad ATF, and advised customers who complained about the ATF that the problem would be resolved by just flushing out the bad ATF and replacing with good ATF.

Corrigan's records showed that in 2006, it sold approximately 70,000 gallons of ATF, and the plaintiffs' purchases account for less than 3 percent of that total.

The plaintiffs determined that they put bad ATF in approximately 650 vehicles, recalled approximately 235 vehicles, and rebuilt the transmissions at a cost of approximately $750,000. The rebuilding stopped when they ran out of money.

In addition to the out-of-pocket losses, the plaintiffs also sued for lost profits and damage to reputation caused by the bad publicity related to the recall and bad ATF.

After 1½ days of deliberation, the jury determined Corrigan was negligent in its handling of the ATF; had breached its implied duties of fitness and merchantability to the plaintiffs; and that the breach and negligence caused the plaintiffs damages as claimed. It awarded $2,226,000 to the plaintiffs.

The jury also rejected Corrigan's nonparty claims against its suppliers.

Type of action: Negligence, breach of implied warranties

Type of injuries: Vehicle damages, damaged business reputation, loss of profits

Name of case: *C-BAM Enterprises, Inc., et al., v. Corrigan Oil Co.*

Court/Case no./Date: Jackson County Circuit Court; 07-1916 NP; July 17, 2009

Tried before: Jury

Name of judge: Chad C. Schmucker

Demand: $1.5 million

Highest offer: $35,000

Verdict amount: $2,226,000

Most helpful expert: Jerry Leyden, Akron Rubber Development Laboratory, Akron, Ohio

Insurance carrier: AIG

Attorney for plaintiff: John Koselka

Attorney(s) for defendant: Withheld

Status: Settlement pending.

#14

Source of man's leg pain is disputed post-crash

Brain lesion could have prompted sensation, as tests turn out negative

$2,091,500

In a lawsuit filed in Lenawee County Circuit Court, plaintiff Douglas Mayher asserted he was entitled to economic and noneconomic damages after defendant minor Jennifer Martin hit his car at an intersection.

In October 2005, Douglas and Tammy Mayher of Britton were stopped at a stop sign at the Palmer Highway/M-50 intersection. Martin had borrowed father and co- defendant Ronald Martin's car to take her friends to Toledo for her 17th birthday.

She was passing a truck on the right gravel shoulder, lost control and crashed into the Mayhers' car door. The car flipped over, and Douglas Mayher had to be removed by the Jaws of Life.

Mayher was taken to University of Michigan hospital by helicopter for a closed-head injury, and was later diagnosed with a labral tear in his shoulder, requiring arthroscopic surgery. He also developed severe chronic pain in his leg, and has been a chronic pain patient for three years.

Mayher underwent numerous tests to locate the pain source, but when all tests were negative, it was determined that the source of the leg pain was a lesion in his brain as a result of the accident. He also experienced severe fatigue as a result of his head injury.

While Mayher did return to work after the accident, the pain, fatigue and cognitive deficits prevented the plaintiff from working full time, as he had before the accident. He consequently lost multiple jobs, but continued to work in his field 20 hours per week.

Mayher underwent brain injury rehabilitation for 3½ years. Two pain specialists, two neuropsychologists, and a shoulder surgeon testified on his behalf.

The defense argued that the leg pain was not a result of the accident and was questionable because there were no objective tests verifying the pain or its source. It also was argued that the brain injury was resolved shortly after the accident, and that the entire claim was questionable because there was evidence that a previous attorney had recommended that the plaintiff obtain neuropsychological testing.

The jury found for Mayher and awarded $2,091,500.

Type of action: Auto negligence

Type of injuries: Traumatic brain injury, shoulder injury requiring surgery

Name of case: *Mayher, et al., v. Martin, et al.*

Court/Case no./Date: Lenawee County Circuit Court; 07-2640-NI; Sept. 15, 2009

Tried before: Jury

Name of judge: Timothy P. Pickard

Demand: $265,000 on $300,000 insurance policy

Highest offer: $100,000

Verdict amount: $2,091,500

Insurance carrier: Farm Bureau

Attorney for plaintiff: David E. Christensen

Attorney(s) for defendant: Withheld

Status: Case settled.

#15

Duct cut in gall bladder surgery, woman dies

Defense said action was known risk, should not be ruled as negligence

$1.8 million

In a wrongful death lawsuit filed in Gratiot County Circuit Court, Aaron Forrest Ames, representing the estate of plaintiff's decedent Lucy Ames, asserted that Dr. Gregory R. Strauther and Gratiot Health System were negligent in a gall bladder removal procedure.

In March 2002, Lucy Ames, 41, was admitted to the hospital for severe abdominal pain. She was diagnosed with chronic gallbladder disease. Two days later, Strauther performed laparoscopic gall bladder removal, a common, simple procedure where patients may leave the hospital within a day or two.

Ames suffered for four months while accumulating more $500,000 in medical expenses. On July 30, 2002, Ames died at the University of Michigan Hospital from sepsis and a perforated cecum (a pouch at the start of the large intestine).

Largest Verdicts continued on page B6

LARGEST VERDICTS

Continued from page B5


McKeen


Dawes

The plaintiff's estate contended that Strauther was negligent, as he clipped the right hepatic duct during the laparoscopic gall bladder removal, which led to plaintiff's decedent's death.

In his operative note, Strauther made no mention of clipping any "bleeders" (i.e. bleeding blood vessels). However, on Lucy Ames' discharge note, Strauther credited bile leakage to the installation of a stent in response to post-operative complications.

The defense asserted that plaintiff's decedent suffered from abnormal anatomical structures, which complicated the surgery. It also was contended that the unintentional clipping of the hepatic duct was a known risk to the surgery, thus, not medical negligence.

Also, after Ames was taken to the UofM Hospital, Strauther stated that the clipping of the duct must have been done inadvertently while he was clipping bleeding blood vessels.

The plaintiff showed that where there was abnormal anatomy, laparoscopic gall bladder removal should not be attempted; as such, clipping a hepatic duct is medical negligence. Further, the procedure should have been an open gall bladder removal.

The jury found for the plaintiff's estate and awarded $1.8 million, with $551,975.62 in special damages for medical expenses resulting from defendant's negligence.

Type of action: Medical malpractice

Type of injuries: Death

Name of case: *Ames v. Strauther, et al.*

Court/Case no./Date: Gratiot County Circuit Court; 06-010212-NH; June 17, 2009

Tried before: Jury

Name of judge: Randy L. Tahvonen

Demand: $1.5 million

Highest offer: $500,000

Verdict amount: $1.8 million

Special damages: $551,975.62

Insurance carrier: MHA

Attorneys for plaintiff: Brian J. McKeen, Terry A. Dawes

Attorney(s) for defendant: Withheld

Keys to winning: Persistent focus on defendant's different versions of what occurred in operative report, discharge summary and deposition

Status: Case settled.

#16

Blocked drain causes flood, destroys land

Construction project results in lake expanding when pipe closed off

$1,747,000

In an inverse condemnation lawsuit filed in Oakland County Circuit Court, plaintiff Estate Development Co. asserted that defendant Road Commission for Oakland County (RCOC) caused loss in land value following blockage of a drain pipe during an extensive road construction project.

Estate Development purchased the vacant property surrounding Mirror Lake in the city of Orchard Lake Village. The lake's sole drain pipe, which prevents the lake from flooding the surrounding land, runs under Pontiac Trail, the road under RCOC's jurisdiction.

In 2000, Estate Development decided to build luxury homes around the lake, and, after extensive time and effort, received approval from the city to begin construction.

Before it could begin, however, RCOC initiated an extensive road construction project on Pontiac Trail. During the project, RCOC blocked the only drain pipe for Mirror Lake, causing Estate Development's land to flood.

Estate Development repeatedly asked RCOC to clear the pipe to relieve the flood waters, but the requests were ignored.

As a result, the wetlands surrounding Mirror Lake expanded so significantly, Estate Development's property was destroyed.

The plaintiff asserted that RCOC was at fault for fully blocking the only drain pipe that would keep Mirror Lake from flooding.

The defendant acknowledged that pipe was blocked, but it wasn't the cause of the flooding; if it did, it was further contended, that would not cause expansion of the lake's wetlands.

The jury found for the plaintiff and awarded $1,747,000.

Type of action: Inverse condemnation

Type of injuries: Diminution in land value

Name of case: *Estate Development Company v. Road Commission of Oakland County, et al.*

Court/Case no./Date: Oakland County Circuit Court; 04-057182-CC; April 29, 2009

Tried before: Jury

Name of judge: Steven N. Andrews

Demand: $3.1 million

Verdict amount: $1,747,000

Most helpful experts: Donald Tilton, Ann Arbor; Kern Slucter, Lansing; Robert Walworth, Livonia; Joseph Rokicsak, Brooklyn, Mich.

Insurance carrier: Liberty Mutual

Attorney for plaintiff: Michael D. Crow

Attorney(s) for defendant: Withheld

Key to winning: Plaintiff's key expert witnesses were retained to evaluate the property long before litigation and at the request of municipalities unrelated to the litigation

Status: On appeal.

#17

Man dies of rare but treatable heart condition

Internist should have had cardiac tests ordered to detect signs, estate says

$1.5 million


Goren

In a medical malpractice lawsuit filed in Monroe County Circuit Court, plaintiff Marcia White, personal representative of the estate of Clayborn M. Baker, asserted that defendant Dr. Arun Gupta was negligent in not diagnosing the plaintiff's decedent's heart condition.

On April 21, 2005, Baker, then 43, was admitted into the hospital following claims of chest pains. The pains stopped shortly after Baker presented at the hospital, and the ER ruled out a heart attack, but Baker was kept in the hospital seven days to treat a possible infection.

Four hours after being released, Baker died of an aortic dissection, a rare but treatable condition in which there is bleeding into, and along the wall of, the aorta.

The plaintiff contended that the defendant internist should have ordered a transthoracic echocardiogram, a cardiac ultrasound that would have detected signs of an aortic dissection. Further, the plaintiff asserted, if that test was negative, a transesophageal echocardiogram — which detects cardiac matters through the esophagus — should have been performed.

The defendant contended there was no need for plaintiff's decedent to see a cardiologist while infected in the hospital, and that the dissection did not begin until after plaintiff's decedent left the hospital.

The jury found for the plaintiff's estate and awarded $1.5 million.

Type of action: Medical malpractice

Type of injuries: Death from undiagnosed aortic dissection

Name of case: *White, et al., v. Gupta, et al.*

Court/Case no./Date: Monroe County Circuit Court; 07-24073-NH; June 4, 2009

Tried before: Jury

Name of judge: Michael W. LaBeau

Verdict amount: $1.5 million

Attorneys for plaintiff: Steven E. Goren

Attorney(s) for defendant: Withheld

Status: Case settled.

#18

E-mail is disputed as a binding contract

Plaintiff asserts he was owed termination fee, $1 million salary

$1,275,417

In a lawsuit filed in U.S. District Court, Eastern District of Michigan, plaintiff Richard Greenwood asserted defendant Kenneth Raznick breached a business venture contract.

On Dec. 18, 2001, Greenwood sent an e-mail to Raznick outlining the terms upon which he would agree to work for Raznick's upstart Web phone business.

Greenwood wrote that he would require a $35,000 monthly salary, business expenses, and a $300,000 severance payment that would be triggered if Raznick terminated the relationship. At the end of the e-mail, Greenwood wrote, "let me know what you think." Greenwood testified that he would only work for Raznick pursuant to the terms outlined in his e-mail, and Raznick needed to agree to and sign the e-mail. Raznick testified that at the time of the e-mail, he could not afford the terms, that he never intended to be bound by them, and that he did not view the e-mail as a binding contract.


Mantese


Rossman

Raznick did, however, agree to sign if the words "Initial Agreed. Subject to final revisions" were inserted before his signature. Upon the insertion of those words, he signed the e-mail.

Over the next three years of their working relationship, Greenwood devoted 3,000 hours per year to the venture. However, Raznick failed to pay Greenwood $35,000 a month, only partially performing his obligations under the contract by making payments of $264,000 over the next three years.

During the periods of nonpayment, Raznick repeatedly reassured and promised Greenwood he would "make him whole" and pay him under the terms of the e-mail contract.

In February 2005, Raznick walked away from the Web phone venture, sold some of his interests in real estate holdings for at least $4 million, and did not pay Greenwood the almost $1 million in salary, plus the $300,000 termination fee, outstanding at the time.

At trial, plaintiff presented evidence that Raznick told at least two business associates that he had a contract with Greenwood and was paying him. On cross-examination, Raznick was repeatedly impeached by plaintiff's counsel through use of Raznick's prior deposition testimony, and forced to admit to the jury that Greenwood did a tremendous amount of work for him and that he did not expect him to work for free.

Raznick's bookkeeper also admitted that when she first received a copy of the agreement, she believed it obliged Raznick to pay Greenwood $35,000 per month, but Raznick told her he had no intention of honoring the contract.

Defendant asserted that the e-mail agreement was a ruse to trick Greenwood's wife that he was working, and that Greenwood was a "partner" of the Web phone venture whose fortunes were tied not to the agreement, but to the fate of the venture.

The jury rendered a unanimous verdict in favor of Greenwood and awarded $1,275,417.

Type of action: Breach of Contract

Type of injuries: Unpaid salary

Name of case: *Greenwood v. Raznick*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 2:05-CV-73553; Dec. 11, 2009

Tried before: Jury

Name of judge: Arthur J. Tarnow

Highest offer: $300,000

Verdict amount: $1,275,417

Attorneys for plaintiff: Gerard V. Mantese, Mark C. Rossman

Attorney(s) for defendant: Withheld

Status: Motions for new trial and/or appeal due by Jan. 15.

#19

Investors in jet assert they exited entity and did not owe bank

Plaintiffs: Market value was negative, so defendants have liabilities

$1,139,265

In a breach of contract lawsuit filed in Oakland County Circuit Court, plaintiff TGINN Jets, LLC asserted defendants Hampton Ridge Properties, LLC and Cullan Meathe failed to make required payments and contributions to an executive jet aircraft owned and operated by the investors, and refused to indemnify plaintiffs relating to bank obligations.

TGINN Jets, LLC was formed to own and operate the jet, and was made up of Lockwood Family Investments, J.R. Slavik & Associates and other entities. Hampton Ridge and Meathe, its principal, became a member of TGINN in 2000, and, besides payment and contribution responsibilities, had agreed to indemnify the plaintiffs for part of their liability to the bank that financed the acquisition of the jet.

Defendants asserted exercising a put option and terminated their membership interest in TGINN in 2003.

Plaintiffs contended defendants never exited TGINN and only declared an intention to exit. To exercise the put, it was asserted, meant first computing the fair market value of defendants' interest in TGINN; because the market value of the jet was less than TGINN's bank debt incurred to buy the jet, the fair market value of defendants' interest

was a negative figure.

As such, it was further contended, defendants were required to make a payment to TGINN, which the defendants never made, and that defendants had liabilities to TGINN.

The court ruled that defendants were still part of TGINN and entered judgment in favor of plaintiffs for $1,139,265.

Type of action: Breach of contract

Type of injuries: Unpaid operating expenses, capital contributions, payments due for indemnification

Name of case: *TGINN Jets, LLC, et al., v. Hampton Ridge Properties, LLC, et al.*

Court/Case no./Date: Oakland County Circuit Court; 07-082312-CK; Sept. 29, 2009

Tried before: Judge

Name of judge: Nanci Grant

Verdict amount: $1,139,265

Attorneys for plaintiff: C. William Garratt, Donald R. Bachand III

Attorney(s) for defendant: Withheld

Status: On appeal.

#20

City worker says she was wrongly terminated

Asserts retaliation after filing PPO against man with whom she had affair

$1.083 million

GORDON

In a lawsuit filed in Macomb County Circuit Court, plaintiff Ann Marie Rogers asserted defendants city of Sterling Heights and Chief of Police David M. Vinson violated the state Whistleblower Protection Act and Elliott-Larsen Civil Rights Act.

In August 2007, Rogers was fired from her position as an animal control officer for the city. Police administrators said their reasoning was because Rogers euthanized a dog that wasn't in her possession as a result of her job, used a drug supplied by the city, lied and failed to write a report about it, and did not show up for disciplinary hearings.

Plaintiff contended she was terminated after complaining that a co-worker with whom she had a three-week affair was harassing her, and filing a personal protection order against him.

Further, plaintiff asserted the city did not issue a written reprimand against Rogers, who had no prior disciplinary record, but police officials failed to follow city policy of "progressive discipline." She said she didn't attend a disciplinary hearing because she had been threatened with criminal charges and had planned to write a report about the incident. Rogers said that Vinson would drop criminal charges if she resigned, but Rogers refused and was terminated.

The jury issued a $1.083 million verdict.

Type of action: Whistleblower, ELCRA retaliatory termination

Type of injuries: Past and future economic damages, emotional distress

Name of case: *Rogers v. City of Sterling Heights, et al.*

Court/Case no./Date: Macomb County Circuit Court; 2007-4106-CZ; Aug. 24, 2009

Tried before: Jury

Name of judge: Edward Servitto

Highest offer: $50,000

Verdict amount: $1.083 million

Attorney for plaintiff: Deborah L. Gordon

Attorney(s) for defendant: Withheld

Status: Judge denied defense's post-trial motions, granted plaintiff's motion for attorney fees and costs; no word on whether case will be appealed or settled.

LARGEST SETTLEMENTS

Key to winning: Thorough depositions, careful review of tens of thousands of documents, and solid briefing of motions for summary disposition

#1

Mother tests positive for G. vaginalis, baby blinded

Plaintiff asserts follow-up care wasn't provided before child was born

$7.53 million

MCKEEN

COX

In a confidential lawsuit filed in Wayne County Circuit Court, plaintiffs minor and next friend sought compensatory damages from defendant physicians and defendant hospital after the minor was permanently blinded.

Six months prior to minor's birth, her mother tested positive for G. vaginalis bacteria in a cervical culture. The mother, however, would not be cultured again until her membranes prematurely ruptured three months later, when she was diagnosed with G. vaginalis, staphylococcus and E. coli. The mother spent two weeks at defendant hospital before returning home.

On April 8, 1993, the mother returned to defendant hospital with a fever and foul-smelling, purulent vaginal discharge. Due to the infection (chorioamnionitis) and the fact that the fetus was in the breech position, the baby was delivered via C-section, and immediately transferred to the neonatal intensive care unit.

On May 12, 1993, the baby received an ophthalmology consultation to rule out retinopathy of prematurity (ROP). She was diagnosed with ROP in both eyes, and a plan of care was made, but no follow-up care was provided.

At another appointment on May 31, 1993, it was noted that the baby had ROP, and a follow-up consultation was recommended. After two diagnoses of ROP, the infant received no follow-up care, and was discharged June 8, 1993.

Appropriate care was not administered until Nov. 2, 1993. By that time, she was diagnosed with stage 5 ROP, and it was too late to save her sight.

Plaintiff asserted that, because the minor is completely blinded in one eye and her other eye is worse than legally blind, she will never be able to drive a car, walk down a city street unassisted or live independently, and will require significant follow-up care.

Defendants contended that there was no proximate cause because there was nothing that could be done to save the child's eyesight.

The case settled for $7.53 million.

Type of action: Medical malpractice

Type of injuries: Permanent blindness

Name of case: Confidential

Court/Case no./Date: Wayne County Circuit Court; confidential; Jan. 26, 2009

Settlement amount: $7.53 million

Attorneys for plaintiff: Brian J. McKeen, Kevin J. Cox

Attorney(s) for defendant: Withheld

Keys to winning: Persistent focus on defendants' concessions as to liability, impeachment of defense liability experts

#2

Evidence of fraud under services contract argued

Plaintiff asserts liabilities understated by millions, unqualified CEO selected

$3.25 million

MANTESE

WILLIAMSON

FREY

In a confidential lawsuit, the plaintiff business owner contended that the defendant company breached a services contract that resulted in millions of dollars in liabilities.

Plaintiff entered into an administrative services contract with defendant that required defendant to manage the day-to-day operations of plaintiff's business.

The agreement required defendant to provide a qualified CEO for the business; provide all systems and controls to process thousands of transactions on a weekly basis; keep accurate books and records; and perform all financial and accounting functions.

Plaintiff claimed that defendant breached the contract by failing to select a qualified CEO; failing to accurately and timely process business transactions; failing to reconcile plaintiff's records with information from other sources; and understating plaintiff's liabilities by millions of dollars.

Further, plaintiff asserted that defendant's breaches of contract caused plaintiff to incur millions of dollars of avoidable liabilities. Plaintiff also named the defendant's CFO as a defendant, alleging that his financial reporting was fraudulent and misled the plaintiff.

The defendant company and its CFO filed numerous motions for summary disposition, claiming that plaintiff had waived a claim for breach of contract by not terminating the parties' contract sooner, and asserting that there was no evidence of fraud. Defendant company and the CFO also challenged plaintiff's damages theories.

In a meeting between the parties prior to litigation, plaintiff's representative offered to accept $1 million to settle the case. Defendant rejected this demand, and plaintiff filed suit, completing two dozen depositions, substantial document review, and briefing for more than 10 motions for summary disposition.

The case settled for $3.25 million two weeks before trial.

Type of action: Breach of contract, fraud

Name of case: Confidential

Court/Case no./Date: Confidential; Sept. 23, 2009

Name of judge: Withheld

Settlement amount: $3.25 million

Attorneys for plaintiff: Gerard V. Mantese, Ian M. Williamson, Brendan H. Frey

Attorney(s) for defendant: Withheld

#3

Woman develops brain injury in surgery prep

Plaintiff: Anesthesiology assistant slow to react following cardiac arrest

$3,045,000

CURTIS

GROFFSKY

In a confidential medical-malpractice lawsuit, the plaintiff asserted that an unapproved epidural and delayed resuscitation following a vascular collapse in the operating room led to a hypoxic ischemic brain injury.

The plaintiff went to defendant hospital for an elective low-anterior colon resection. At the post-anesthesia care unit, a thoracic epidural was placed for post-op pain control. She was then taken to the OR by the defendant anesthesia assistant, who, without approval from the defendant anesthesiologist, activated the epidural with 5 ml of 2 percent lidocaine with epinephrine.

In the OR, an IV induction took place with lidocaine, fentanyl, propofol, and Nimbex. Minutes after, the anesthesiologist left to another patient, leaving the anesthesiology assistant to watch and manage the plaintiff's anesthesia care.

The plaintiff became hypotensive and bradycardic, and subsequently went into pulseless electrical activity. Plaintiff's experts said the most probable cause was related to the epidural that was activated just prior to her induction.

At the time of her surgery, the plaintiff was significantly volume-depleted because of previous bowel preparation she had undergone in order to flush her system prior to surgery, leaving her significantly dry.

A low fluid volume contributed to her vascular collapse, and, plaintiff's experts said, the anesthesiology assistant's decision to activate the plaintiff's epidural in conjunction with the induction, caused a significant vasodilation. In turn, this caused the plaintiff's blood pressure to bottom out.

Although the plaintiff was successfully resuscitated following cardiopulmonary arrest, the resuscitation was delayed, causing a significant hypoxic ischemic injury to her brain and leaving her permanently disabled.

The plaintiff's counsel asserted that, once the plaintiff developed her hypotension and bradycardia, the anesthesiology assistant was slow to react in providing appropriate volume replacement and appropriate amounts of resuscitative medications. Further, the anesthesiology assistant delayed in contacting the anesthesiologist to request that he return to the OR to provide the appropriate care during this crisis.

The defendants denied any negligence in the care of the plaintiff, asserting that, when the plaintiff's blood pressure began to drop in the OR, it was appropriate for the anes-

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LARGEST SETTLEMENTS

Continued from page B7

thesia assistant to address the problem, and calling in the attending anesthesiologist immediately was not necessary. Further, it was contended, the plaintiff also may have experienced an allergic reaction to the induction meds.

The case settled for $3,045,000.

Type of action: Medical malpractice

Type of injuries: Hypoxic ischemic brain injury

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; July 15, 2009

Name of judge: Confidential

Settlement amount: $3,045,000

Special damages: Long-term care

Attorneys for plaintiff: Matthew G. Curtis, Richard L. Groffsky

Attorney(s) for defendant: Withheld

#4

Crash kills motorcyclist, injures his passenger

Whether car or bike was in correct lane is contested; matter settles

$3 million

In a confidential lawsuit, the estate for plaintiff's decedent and plaintiff passenger sought damages following an automobile-motorcycle collision.

The collision took place in June 2007, when the decedent's motorcycle and defendants' car were involved in a head-on collision. The motorcycle operator died in the collision, and his passenger suffered orthopedic injuries.

Plaintiffs asserted that the defendants' vehicle was in the plaintiffs' lane at impact. Defendants countered that the motorcycle driver provoked the collision sequence by being in the defendants' lane to begin with. Defenses included contested liability, comparative negligence and alleged intoxication of the plaintiff-motorcycle operator.

The matter settled at facilitation for $3 million.

Type of action: Third-party automobile negligence

Type of injuries: Death, orthopedic injuries

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Dec. 15, 2009

Tried before: Mediation

Name of facilitator: Daniel P. Makarski

Settlement amount: $3 million

Most helpful experts: Gary McDonald, Grand Rapids; Robert Gartrell, Yuba City, Calif.

Attorney for plaintiff: Samuel H. Pietsch

Attorney(s) for defendant: Withheld

Keys to winning: Pre-suit facilitation to focus the liability issues for case development, followed by re-facilitation at close of discovery

#4

Premature child's oxygen loss causes brain damage

Surfactant therapy should have been given, say experts, defendants

$3 million

In a confidential lawsuit filed in Oakland County Circuit Court, plaintiff next friend asserted defendant hospital and defendant physicians were negligent when plaintiff minor suffered birth trauma, leaving her permanently disabled by cerebral palsy and global developmental delays, including mental retardation.

In late December 2004, plaintiff minor was born prematurely at defendant hospital. Upon admission to the neonatal intensive care unit (NICU), the child was noted to have tachypnea, grunting, intercostal retractions and desats without oxygen. The admit note indicated that the child should be under close observation for respiratory distress.

During her admission to the NICU, the child's oxygen saturation and condition steadily decreased. At one point, three hours elapsed without any nursing notes being made as to the child's oxygen saturation. Eventually, despite the fact that she was receiving 100 percent oxygen, her blood oxygen continued to desaturate.

Evaluation revealed that she had respiratory distress syndrome, and had suffered a respiratory collapse stemming from air leaking into her chest from her lungs, a condition known to occur in premature infants.

Plaintiff's expert witnesses testified that the simple use of surfactant therapy would have prevented the child's massive brain injuries. Further, it was asserted, if surfactant therapy (which improves the level of oxygen saturation and keeps a baby's lungs inflated by preventing them from sticking together) was used instead, the child's lungs would have worked better and injury would have been avoided.

Defendant physicians admitted that surfactant therapy is commonly used to expand a baby's lungs and improve oxygenation, and that any NICU physician should consider surfactant therapy when a baby's oxygen needs are not being met.

Because of the deprivation of oxygen to her brain, the child suffered from hypoxic ischemic encephalopathy, which caused massive brain damage. Subsequent evaluation revealed that her IQ was in the 66th percentile, and she would perform, at best, in the mildly mentally impaired range. It also was noted that plaintiff minor will require full-time support throughout her life.

Defendants contended that brain imaging after the injured indicated that the child's decreased capacity was not the result of the negligent respiratory collapse.

The matter settled for $3 million.

Type of action: Medical malpractice

Type of injuries: Hypoxic ischemic encephalopathy causing cerebral palsy and mental retardation

Name of case: Confidential

Court/Case no./Date: Oakland County Circuit Court; confidential; January 2009

Highest offer: $2.1 million

Settlement amount: $3 million

Attorneys for plaintiff: Brian J. McKeen, Kevin J. Cox

Attorney(s) for defendant: Withheld

Key to winning: Persistent focus on defendants' concessions as to liability

#4

Vacuum use, no prehydration cited for brain trauma

Plaintiff asserts standard of care was violated in boy's birth

$3 million

McKEEN

DAWES

In a confidential lawsuit filed in Wayne County Circuit Court, plaintiff next friend asserted defendant hospital and defendant physicians were negligent when plaintiff minor suffered birth trauma, leaving him permanently disabled by perinatal asphyxia and mechanical trauma to the head.

In April 1997, the mother presented at defendant hospital in labor. Complaining of pain, the mother requested an epidural from the residents who were managing her care. The certified registered nurse anesthetist (CRNA) who started the epidural, however, did not prehydrate the mother, and did not monitor the mother's blood pressure after the epidural was started.

Because of this, the mother became severely hypotensive, which resulted in the deprivation of blood perfusion to the placenta and maternal brain. No medication was ever given to elevate the mother's blood pressure.

After the CRNA's realized the mother was dangerously hypotensive, the attending OB/GYN was summoned and applied a vacuum extractor at high station to deliver the child.

The child was born in a severely depressed, floppy and pale condition, had suffered from acidosis and was found to have cephalohematoma and mild ventricular dilation. The child has an IQ in the mid-70s, has limited educational and vocational potential, must attend special schools, and requires assistance with his daily life.

Plaintiff asserted the OB/GYN negligently applied the vacuum extractor, which was in clear violation of the standard of care, as was the CRNA's decision not to prehydrate the mother.

Defendants contended that the mother was adequately hydrated, and that the application of the vacuum extractor did not cause the boy's brain trauma.

The matter settled for $3 million.

Type of action: Medical malpractice

Type of injuries: Birth trauma, causing brain trauma, cognitive delay that required extensive corrective surgical procedures

Name of case: Confidential

Court/Case no./Date: Wayne County Circuit Court; Confidential; August 2009

Settlement amount: $3 million

Attorneys for plaintiff: Brian J. McKeen, Terry A. Dawes

Attorney(s) for defendant: Withheld

Key to winning: Persistent focus on defendants' concessions as to liability

#5

Agency, manufacturer clash over contract

Plaintiff says millions were owed for six years prior to termination

$2.5 million

GILLARY

In a breach of contract lawsuit filed in U.S. District Court for the Eastern District of Michigan, plaintiff sales representative agency asserted that defendant automotive product manufacturer owed millions of dollars in unpaid sales commissions.

The plaintiff sold the defendant's products to the automotive industry. After the plaintiff was terminated, a suit was filed for life-of-part commissions under the Procuring Cause theory.

Plaintiff believes there was no written agreement in effect, and that the agreement signed more than 20 years prior with a different corporation did not carry over after an asset sale.

Defendant's attorneys demonstrated that the contract carried over as part of the asset sale and was still binding upon the parties.

Plaintiff's counsel therefore amended the complaint and sought to strictly enforce the contract during the six years preceding the termination date. Plaintiff and its counsel performed an audit, where it was determined there were millions of dollars in commissions owed to the plaintiff for failure by the defendant to comply with the written contract between the parties.

The matter settled for $2.5 million.

Type of action: Breach of contract

Type of injuries: Unpaid commissions

Name of case: Confidential

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; confidential; Aug. 21, 2009

Name of judge: Confidential

Settlement amount: $2.5 million

Attorney for plaintiff: Randall J. Gillary

Attorney(s) for defendant: Withheld

Key to winning: Enforcing the contract against the defendant, which the defendant sought to force against the plaintiff

#6

Improperly secured sign fractures teenager's skull

Device was held in place by sandbags, made with secondhand donor parts

$2.125 million

GURSTEN

ALEXANDER

In a third-party automobile negligence lawsuit filed in Macomb County Circuit Court, plaintiff minor Ashley Catherine Lewis, next-friend Walter Lewis and co-next friend Denise Hammond asserted defendants State Barricades, Inc. and Major Cement Co. were responsible for traumatic injuries causes by a defective temporary traffic control sign.

On Aug. 9, 2008, Ashley Lewis, 15, was traveling in the passenger seat of her mother's vehicle on Masonic Road, in St. Clair Shores. Traffic was slow because of construction. Immediately to their right, on the side of the road was a temporary traffic control sign warning of a detour ahead.

As a thundercloud passed through the area, a gust of wind of approximately 38 mph blew the sign up and into the air, propelling the steel leg of the sign through the windshield of the car, striking Lewis in the head. It caused a skull fracture and serious traumatic brain injury, and required traumatic optic neuropathy

Subsequent legal discovery showed the traffic construction sign, built by State Barricades, was dangerously defective and in violation of numerous codes and requirements. Examination of the sign demonstrated it was missing a washer on one of its bolts. Also, the sign was held in place with ballast sand bags, instead of being embedded into the ground as required.

State Barricades admitted in deposition that secondhand donor parts from older signs were used to put this particular traffic sign together. Also, the defendant said it delivered the sign to Major Cement lying on the ground, and that Major Cement not only stood the sign up, but failed to inspect and monitor the sign.

Defendants stressed that, although plaintiff had suffered a serious injury, she had made a remarkable recovery and

returned to her pre-existing lifestyle with no or very little impairments. In addition, defendants argued that many of plaintiff's post-accident symptoms were attributable to other events in her life and not from her injuries.

The matter settled at facilitation for the case evaluation amount of $2.125 million.

Type of action: Third-party automobile negligence

Type of injuries: Traumatic brain injury, headaches, traumatic optic neuropathy

Name of case: *Lewis, et al., v. State Barricades, Inc., et al.*

Court/Case no./Date: Macomb County Circuit Court; 08-3740-NO; Nov. 20, 2009

Tried before: Facilitation

Name of judge: Diane M. Druzinski

Name of facilitator: Daniel P. Makarski

Settlement amount: $2.125 million

Most helpful expert: W. Thomas Munsell, Southfield

Attorneys for plaintiff: Steven M. Gursten, John T. Alexander

Attorney(s) for defendant: Withheld

#7

Teen crosses street, is hit, suffers brain injury

Expert's testimony, light factor show driver could have prevented collision

$2 million

SINAS

In a confidential pedestrian/auto-liability lawsuit, the plaintiff asserted damages after being struck by the defendant's vehicle.

The plaintiff, 15, was crossing a four-lane road to get to a school bus stop at around 7 a.m. on a cold January morning. He crossed almost three lanes before being struck by the defendant, who was driving a vehicle owned by a small corporation. The investigating police officers concluded that the accident was fully the plaintiff's fault.

Plaintiff asserted that the defendant was negligent. As the defendant admitted, moments before the collision, she was looking over at the bus stop to see her son and did not have time to avoid the plaintiff once she looked forward.

Also, it was asserted, plaintiff's visibility was enhanced by two overhead street lights and cross-beam illumination from a vehicle on a side street with its headlights pointed in the direction of plaintiff's travel. Further, an accident reconstruction analysis confirmed that plaintiff was one step or two-tenths of a second away from not being struck by the defendant.

Defendant contended that, even if the driver was negligent, it was minimal compared to plaintiff's comparative negligence in crossing the street when motor vehicle were in the vicinity.

The case settled for the defendant's policy limit of $2 million.

Type of action: Pedestrian/auto-liability

Type of injuries: Severe brain damage

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; April 30, 2009

Settlement amount: $2 million

Attorney for plaintiff: George T. Sinas

Attorney(s) for defendant: Withheld

#7

Driver blames medical condition for fatal crash

Experts refute claims that he saw light if he had lost consciousness

$2 million

In a confidential automobile negligence lawsuit, the plaintiff's estate asserted that it was entitled to economic and noneconomic damages after an auto accident killed the plaintiff's decedent.

The defendant driver, traveling between 45 and 55 mph on a main road, entered the intersection, where he ran a red light. He hit the plaintiff's car, killing the decedent.

The defendant asserted incapacitation secondary to medical event (sudden emergency), and a prominent neurologist supported the contention. The defendant also said he saw his light as green, not red.

The plaintiff used testimony from an officer who was at the scene and said he found the defendant completely alert, responsive and willing to discuss the accident. Further, the defendant never mentioned any alleged medical condition, loss of consciousness, or other sudden emergency as a cause of the accident.

Expert witnesses testified that the defendant could never have seen the light, which he claimed was green, if he had been in the midst of a sudden medical emergency as he belatedly claimed.

The case settled at facilitation for $2 million.

Type of action: Automobile negligence

Type of injuries: Death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Oct. 7, 2009

Tried before: Facilitation

Name of judge: Confidential

Settlement amount: $2 million

Attorney for plaintiff: Gregory M. Bereznoff

Attorney(s) for defendant: Confidential

Key to winning: Countering sudden emergency defense offered by defendant's carrier

#8

Drop in amniotic fluid levels results in asphyxia

Child has cerebral palsy, developmental delays; case settles in arbitration

$1.95 million

REITER

In a confidential medical-malpractice/birth trauma lawsuit, the plaintiff mother asserted that the defendant hospital was negligent when the plaintiff-minor suffered from asphyxia, resulting in cerebral palsy and developmental delays.

Plaintiff was just over 40 weeks pregnant. Her prenatal doctor sent her to the hospital for a routine nonstress fetal monitoring test (NST) for fetal well-being due to her gestational age. The NST was reassuring but showed two fetal heart rate decelerations (decelerations occur in about 50 percent of NSTs).

A biophysical profile (for fetal well-being) also was performed and was 10 out of 10, a perfect score (a score of 10 usually means that no further testing is necessary for at least a week).

The amniotic fluid level was in normal range, but had decreased by about 30 percent to 40 percent from an ultrasound performed three days earlier. Plaintiff was sent home to follow up with her prenatal doctor.

Plaintiff followed up with her prenatal doctor in five days. At that time, everything looked fine.

The following day, plaintiff had contractions and her water broke. She rushed back to the hospital. The fetal monitor strips immediately showed severe abnormalities.

Delivery by emergency C-section took 27 minutes from the time the fetal monitoring started. Plaintiff-minor suffered from asphyxia. She now suffers from cerebral palsy and developmental delays.

Plaintiff asserted that the significant decrease in amniotic fluid six days earlier, though still in a normal range, required further evaluation and follow-up because the amniotic fluid could continue to decrease and become dangerously low. Dangerously low fluid could result in umbilical cord compression and asphyxia, which plaintiff asserted has occurred.

Also, decreasing amniotic fluid could indicate that the placenta was getting old and not working well, which happens sometimes at term.

At the very least, it was contended, the plaintiff should have been seen in two to three days for further testing; this likely would have shown further abnormalities and avoided the asphyxia that occurred on the date of the delivery.

Further, plaintiff's position was that obstetricians should be cautious when amniotic fluid levels decrease in a term pregnancy — even if those levels are still within normal limits — and patients should be advised of risks and given options under these circumstances.

The defendants asserted that the NST and biophysical profile were both normal on the visit six days before the delivery, indicating no further testing was necessary for at least a week. Moreover, it was contended, the mere fact that there was a decrease in amniotic fluid was not a reason to do any further testing since it was still within normal limits.

Finally, the defendant asserted, the event that occurred on the date of delivery was unpreventable and had nothing to do with the decrease in amniotic fluid a week earlier.

The matter settled for $1,950,000 through mediation.

Type of action: Medical malpractice, birth trauma

Type of injuries: Cerebral palsy, developmental delays

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; July 29, 2009

Tried before: Mediation

Name of judge: Withheld

Name of mediator: Withheld

Settlement amount: $1,950,000

Most helpful expert: InFocus Research Group, Shelby Township

Attorney for plaintiff: Jesse M. Reiter

Attorney(s) for defendant: Withheld

Key to winning: Focus grouping early in discovery to help narrow the issues

#9

Man given heparin too soon, becomes disabled

Miscommunication asserted after epidural hematoma paralyzes

$1.9 million

ERLICH

The plaintiff, a 54-year-old male, was admitted to an area hospital with a blood clot in the lower right extremity. Emergency surgery to evacuate the clot was performed under an epidural anesthetic.

Upon conclusion of the surgery, the plaintiff was transferred to the post-anesthesia care unit (PACU), where the anesthesiologist removed the epidural catheter, which had been used to administer the anesthetic. Twelve minutes later, heparin, an anticoagulant, was administered by the PACU nurse.

For the next 24 hours, the heparin infusion continued until it was noted that the plaintiff became quadriplegic. Though he regained use of his arms, the plaintiff is permanently disabled and wheelchair bound, and unable to continue employment as a farm hand.

Expert witnesses asserted that disruption of tissue and bleeding that occurs at the site of the removal of the epidural catheter mandates that anticoagulants not be administered for at least one hour after removal of the epidural catheter. Administration of heparin within one hour of removal of a catheter doesn't allow sufficient time for clotting to occur at the removal site.

In the case of the plaintiff, when bleeding occurred from removal of the epidural catheter, the blood went into the epidural space (a closed space). As the bleeding continued, the epidural space filled with blood, which increased pressure on the spinal cord, causing deviation and damage to the spinal cord.

Plaintiff asserted that the defendants' negligence was because of a communication failure between the anesthesiologist, surgeon and PACU nurse as to when it was safe to administer heparin.

In addition, defendants failed to recognize the development of an epidural hematoma after removal of the epidural catheter and administration of heparin.

A facilitation settlement was reached at $1.9 million.

Type of action: Medical malpractice

Type of injuries: Paraparesis resulting in loss of use of lower extremities, loss of bowel and bladder control, sexual dysfunction

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; March 6, 2009

Tried before: Facilitation

Name of judge: Withheld

Case evaluation: $1,328,500

Facilitation settlement amount: $1.9 million

Special damages: Lost earnings, attendant care, loss of services

Most helpful experts: Dr. Steven Newman; Robert Ancell, Ph.D.; William King, Ph.D.

Attorney for plaintiff: Sheldon R. Erlich

Attorney for defendant: Withheld

Key to winning: Obtaining deposition testimony establishing that defendants were faulting each other for the failure to communicate as to when it would be safe to administer heparin post-operatively

#9

Premature child born with cerebral palsy, learning problems

Plaintiff should not have been discharged from hospital

$1.9 million

On Oct. 2, 2004, the plaintiff, pregnant for the first time, presented to defendant hospital at approximately 29 weeks' gestation with a complaint of left upper quadrant abdominal pain. Her blood pressures were elevated. She was discharged the next day.

Two days later, plaintiff presented to her prenatal care office, and was noted to have positive protein in her urine. She was sent to the hospital for pregnancy-induced hypertension

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(PIH) labs and a 24-hour urine test.

At the defendant hospital, she had a potential diagnosis of PIH (a diagnosis requiring elevated blood pressures) versus mild preeclampsia (a diagnosis requiring high blood pressure and protein in the urine). She was discharged home with instructions for biweekly nonstress testing (NST) and a 24-hour urine test.

REITER

SABATINI

On Oct. 7, she presented to defendant hospital for a biophysical profile test (BPP) after there was difficulty in obtaining an NST at her prenatal care office. Her blood pressure in triage was elevated. Physical exam revealed 2+ edema (swelling). She was admitted to the hospital for monitoring.

Two days later, the resident doctor documented a plan to repeat PIH lab work, and continue the current care plan. The attending physician had a different plan and discharged her with a diagnosis of preeclampsia. She was told to follow-up on an outpatient basis.

On Oct. 11, the plaintiff returned to defendant hospital with complaints of a headache and elevated blood pressure. Fetal monitoring was nonreassuring. A BPP was performed, and was reported as 2 out of 10 (nonreassuring) with fetal heart rate decelerations.

A C-section was performed, with blood gases after birth showing metabolic acidosis. The baby was transferred and the records indicated neonatal depression. A CT scan of the head revealed intraventricular hemorrhage (IVH), not uncommonly seen in premature babies of this gestation, and possible periventricular leukomalacia (PVL), a preterm white-matter brain injury.

Plaintiff-minor, 5 years old, had a normal IQ, but showed early signs that he might have learning problems. He also had mild cerebral palsy, but was walking and functioning at near normal levels.

Plaintiff asserted she should not have been discharged from the hospital Oct. 9, 2004. Rather, the resident's plan of continued monitoring should have been followed, as she was preeclamptic. Delivery should then have occurred prior to the presence of nonreassuring fetal status on Oct. 11 at 30 weeks and 5 days gestation.

Defendants' position was that the injury occurred as a result of the prematurity, as evidenced by the head imaging that showed IVH and possible PVL. Because there was no dispute that the baby needed to be delivered prematurely, the prematurity-related injuries to the brain could not have been prevented.

The case settled for $1.9 million.

Type of action: Medical malpractice (birth trauma)

Type of injuries: Mild cerebral palsy, motor skill delays

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; March 5, 2009

Name of judge: Confidential

Settlement amount: $1.9 million

Most helpful expert: InFocus Research Group, Shelby Township

Attorneys for plaintiff: Jesse M. Reiter, Juliana B. Sabatini

Attorney for defendant: Withheld

#10

Software sales group seeks commissions

Plaintiff says there was no 'just cause' for defendant to end agreement

$1,813,293.39

GILLARY

In a confidential arbitration, plaintiff New Jersey-based software sales representative agency asserted that it was owed commissions after defendant Michigan-based software company refused to pay commissions that closed or could have been closed within the 90-day period subsequent to the contract termination.

The defendant, through a letter, terminated the long-standing sales representation agreement with the plaintiff in December 2004. The parties were in the process of negotiating a new agreement, and continued to do so through March 2005.

Plaintiff's counsel issued a letter to defendant demanding strict compliance with the original agreement, which allowed plaintiff 90 days after the effective termination date in March 2005 to close additional sales that were in the pipeline. The defendant issued another termination notice, citing "just cause," and also issued a cease-and-desist order to prohibit plaintiff from having any further contact with customers.

Defendant contended that evidence supported a just-cause termination of the agreement, and that if any of the sales had been signed and were completed by March 7, 2005, the plaintiff would have been paid commissions on those sales. However, it was asserted, because all sales were completed after that date, plaintiff is not entitled to those commissions.

Plaintiff asserted that there was no definition of "just cause" in the contract, and reasons contended by defendant as just cause do not constitute just cause for termination.

Further, it was asserted, defendant did not give appropriate notice regarding these matters or opportunity for plaintiff to correct such matters prior to the termination letter; and that the matters were an afterthought contrived to justify defendant's efforts to deprive plaintiff of commissions.

The arbitration panel awarded the plaintiff $1,813,293.39.

Type of action: Unpaid sales commissions

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Sept. 30, 2009

Tried before: Arbitration

Names of arbitrators: George A. Googasian, Thomas W. Cranmer, James J. Rashid

Arbitration award: $1,813,293.39

Special damages: $100,000 penalty damages under Michigan Sales Commission Act

Attorneys for plaintiff: Randall J. Gillary, Kevin P. Albus

Attorney(s) for defendant: Withheld

#11

Damages sought after deed acquired by fraud

Plaintiff asserts national title group responsible for misappropriation

$1.8 million

MANTESE

HANSMA

In a lawsuit filed at Oakland County Circuit Court, plaintiff Isaiah Shafir sought to quiet title — and, subsequently, monetary damages — after the deed to 42 single-family properties he owned was used fraudulently.

In 2005, Shafir was approached by defendant Randy Saylor, who expressed interest in purchasing the properties for $3.8 million. Saylor said his out-of-state lender required a copy of the deed to approve the loan, and Shafir faxed it. Saylor later told Shafir that he had not been approved for financing, but he wished to buy the properties on land contract.

Saylor purportedly used the copy of the faxed deed to record an affidavit of lost original deed with the Register of Deeds. The properties were sold subsequently to straw purchasers.

When Shafir discovered in 2008 that he'd been divested of his properties, he sued Saylor and all transferees, seeking to quiet title in his favor.

The plaintiff asserted that co-defendant First American Title Insurance Co. — which had a standard agency agreement with Patriot Title and Simmons Title, run by Saylor and partner Kirk Scheib — was ultimately responsible for the fraud.

First American asserted that it was not liable for the acts of its agents in participating in these transactions. Relying on the contract between itself and its agents, First American argued that the agents' authority to act on its behalf extended only to issuing policies and commitments, and did not include defrauding others.

Also, the defense contended, the contracts between First American and the agents did not include recording documents and closing transactions as part of the agents' duties.

Through detailed discovery, the plaintiff demonstrated that First American knew its agents were closing transactions and recording documents; that First American relied on its agents to perform these duties; and that these actions were an integral part of the agency relationship.

Plaintiff's counsel took numerous depositions, including assistant regional counsel for First American, who testified that agents were expected to record documents in the course of issuing policies — a key admission in the case, which undercut First American's position in its earlier briefs.

The defense asserted that Shafir acknowledged being a seasoned real estate investor, but never provided any documentary or other support for his claim that he only faxed a copy of the deed. He also was unable to produce the deed he allegedly only faxed or records to show that a fax transmission had been made. Further, defense contended, Shafir had signed a document acknowledging that he had actually handed the deed to Saylor.

Plaintiff filed a motion for partial summary disposition, demonstrating that First American was liable as a matter of law for the fraud of its agent committed within the scope of his duties. Shafir soon sought monetary damages instead of a quiet title, as property values on the 42 homes had declined.

Shortly before the motion was scheduled to be heard, a facilitation resulted in a $1.8 million settlement. The majority of the settlement was paid to lenders who held prior mortgages on the properties, and the properties were conveyed to the lenders.

Type of action: Fraud, slander of title, quiet title

Type of injuries: Loss of real estate

Name of case: *Shafir, et al., v. Krauss, et al.*

Court/Case no./Date: Oakland County Circuit Court; 08-091478-CH; May 12, 2009

Tried before: Judge

Name of judge: Wendy Potts

Facilitator: Barry Howard

Settlement amount: $1.8 million

Attorneys for plaintiff: Gerard V. Mantese, David F. Hansma

Attorney for defendant: Phillip J. Neuman

Key to winning: Thorough deposition testimony from key witnesses, vigorous motion practices

#11

Man, 56, seeks damages from motorcycle crash

Though defense says he was let go due to economy, case settles

$1.8 million

GOODWIN

In a confidential lawsuit, the plaintiff asserted entitlement to damages following a motorcycle-car collision.

The plaintiff, on his way to work via motorcycle, was seriously injured when a box truck turned in front of the motorcycle. Plaintiff dropped his bike in an attempt to avoid the collision.

Plaintiff suffered a complex right arm fracture and a brain injury. Several surgeries followed, and plaintiff eventually returned to work as a sheet metal model maker, but co-workers noticed he could not perform his work the same as prior to the accident. He was fired after a month back on the job.

As a result of plaintiff's struggles at work, his traumatic brain injury was more closely studied and the full effect of it was documented. Plaintiff also underwent cervical fusion and lumbar laminectomy.

The plaintiff provided doctor reports, economic and vocation expert testimony, and a day-in-the-life video chronicle to present full value of the claim.

The defendant contended plaintiff, who was 56 years old, was let go from his job because of mass downsizing in the industry, and had limited excess wage loss because of his age. Further, it was asserted, the plaintiff would return eventually to some type of employment.

The case settled at facilitation for $1.8 million.

Type of action: Auto negligence

Type of injuries: Complex right arm fracture, traumatic brain injury

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Oct. 2, 2009

Tried before: Facilitation

Name of mediator: Martin G. Waldman

Settlement amount: $1.8 million

Most helpful expert: Barry Grant, CPA, CFF, Southfield

Attorney for plaintiff: Scott A. Goodwin

Attorney(s) for defendant: Withheld

#12

Motor, cognitive defects result of delayed birth

Hospital denies asphyxia was cause of birth trauma, cerebral palsy

$1.75 million

In a confidential lawsuit filed in Wayne County Circuit Court, plaintiff next friend asserted defendant hospital and defendant physicians were negligent when plaintiff minor suffered birth trauma, leaving her permanently disabled by spastic quadriplegic cerebral palsy.

In December 1995, the mother presented to defendant hospital, complaining of premature rupture of membranes at 30⅘ weeks gestation. Though the mother was stable with reassuring heart tones, she presented with serious risk factors, such as a prior C-section, prior vaginal birth after C-section, oligohydramnios, a urinary tract infection, and a positive group B strep culture.

On Dec. 22, 1995, the mother presented at defendant

hospital, showing signs of fetal distress and multiple indications that an immediate C-section was warranted. Despite this, the hospital still did not deliver the child. The mother felt the umbilical cord coming out between her legs, an indication for an immediate C-section, as the cord can kink, completely shutting off the blood supply to the fetus. However, it still took another 20 minutes to get the baby girl delivered. The infant was born blue, in extreme distress, even her progress note on her first day of life noted that she suffered "asphyxia."

Plaintiff minor suffered motor and cognitive defects and will require round-the-clock care for the rest of her life. She requires observation while eating to ensure that she does not choke on her food, and, at age 7, still required physical therapy to be able to stand in a Rifton walker and take five steps.

Defendant's causation defenses were that plaintiff minor's APGAR scores were too high for her to be an asphyxiated child; her damages came from an unspecified and unknown infection; and her injuries were associated with prematurity, rather than birth asphyxia.

The matter settled for $1.75 million.

Type of action: Medical malpractice

Type of injuries: Birth trauma, causing hypoxic ischemic encephalopathy and spastic quadriplegic cerebral palsy

Name of case: Confidential

Court/Case no./Date: Wayne County Circuit Court; confidential; May 2009

Settlement amount: $1.75 million

Attorneys for plaintiff: Brian J. McKeen, Terry A. Dawes

Attorney(s) for defendant: Withheld

Keys to winning: Persistent focus on defendants' concessions as to liability, impeachment of liability experts

#13

Infant is born with cognitive delays, deficits and cerebral palsy

Plaintiff asserts earlier admission would have prevented birth defects

$1.625 million

In a confidential medical-malpractice case, the plaintiff mother filed suit against defendant hospital for plaintiff minor's cognitive delays and deficits and cerebral palsy at birth.

The plaintiff treated prenatally with a midwife prenatal clinic, attended appointments regularly, and was noted to have a family history significant for hypertension. On Oct. 20, 1998, she called her provider with complaints of swelling of both feet and ankles, a common finding during late pregnancy, and was told to elevate her feet.

The next day, she called her prenatal provider with complaints of decreased fetal movement since the night before, severe edema in feet and ankles, dizziness and blurred vision.

She was advised to go to labor and delivery at defendant hospital to be evaluated and to rule out preeclampsia. The diagnosis of preeclampsia requires high blood pressure (140/90) and protein in the urine.

Plaintiff presented to defendant hospital for evaluation. The hospital records note only complaints of swollen feet and blurred vision. She had normal blood pressure and urine protein levels, and preeclampsia was ruled out.

A nonstress test was performed by the hospital in-house OB/GYN physician. It was initially nonreactive, but then became reactive (reassuring). A biophysical profile also was performed, and it revealed a score of 8/8 (very reassuring).

Test results were reported to plaintiff's certified nurse-midwife prenatal provider, who did not come to the hospital. She was discharged home via telephone order from the prenatal provider with instructions to perform fetal kick counts to monitor fetal movement.

She also was sent home on preeclampsia precautions.

On Nov. 3, approximately 36 weeks into the pregnancy, plaintiff called in the late afternoon with complaints of contractions since 11 a.m., low back pain, headache, and swollen feet and ankles. She was advised to go to labor and delivery at defendant hospital for evaluation.

Plaintiff presented to defendant hospital more than an hour later. Blood pressure was severely elevated and urine protein was 3+. Fetal heart tones were nonreassuring.

The nurse contacted the prenatal care provider OB/GYN, who was completing another delivery. Plaintiff-minor was not delivered until one hour and 14 minutes later by emergency C-section.

Upon delivery, a mild placental abruption was noted. Plaintiff-minor had low Apgars numbers, decreased respiratory effort, and low cord blood gases.

The initial diagnosis was birth depression and hypoxic ischemic encephalopathy. Subsequent head imaging, however, showed white matter brain damage (periventricular leukomalacia), which typically occurs between 28-32 weeks' gestation.

Plaintiff-minor suffers from cognitive delays and deficits, and cerebral palsy.

Plaintiff asserted that she should have been admitted to the hospital Oct. 29 for observation, 24-hour urine testing, and continued fetal monitoring.

It was plaintiff's position that, had this been done, the blood pressure and urine protein would have been increased, and the fetal monitor tracing would have been abnormal. Delivery should then have occurred Oct. 30.

Plaintiff further asserted that on Nov. 3, delivery should have occurred sooner based on the nonreassuring fetal monitor tracing. Plaintiff also asserted that the MRI films did not show periventricular leukomalacia as reported.

Defendants contended that the injury occurred during the prenatal period (28-32 weeks) as evidenced by the head imaging that showed periventricular leukomalacia. Therefore, sooner delivery would not have made a difference in outcome.

In addition, defendant hospital claimed that plaintiff did not have preeclampsia on Oct. 29 (as the blood pressure and urine protein levels were normal), but had reassuring fetal status, and therefore could be discharged.

The case settled for $1.625 million, though the defendants had issues on appeal at the time.

Type of action: Medical malpractice

Type of injuries: Cognitive delays and deficits, cerebral palsy

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; April 2009

Tried before: Mediation

Name of judge: Withheld

Case evaluation: $1.5 million

Settlement amount: $1.625 million

Most helpful experts: InFocus Research Group, Shelby Township

Attorney for plaintiff: Jesse M. Reiter, Juliana B. Sabatini

Attorney for defendant: Withheld

Key to winning: Focus grouping early in discovery

#14

Plaintiff's mental deficiency is questioned

Defendants say decedent didn't suffer after accident, case settles

$1,505,000

KAVANAUGH

VRANA

In a wrongful death lawsuit filed in St. Clair County Circuit Court, plaintiffs Timmy Holcomb and Patricia Wininger, acting individually and as co-personal representatives of the estate of James Dupuy, asserted damages following an automobile accident that led to Dupuy's death.

On the day of the accident, defendant Kaylene Kessler was driving Dupuy to one of his odd jobs in Port Huron. Defendant Edward Respondek, who was acting in the course and scope of his employment for defendant Seng Tire, Inc., stopped at an intersection with a flashing red signal but did not look in the direction of Kessler's car before proceeding, and collided with her car.

The force of the impact caused Dupuy's head to strike the windshield of the vehicle.

He was taken by ambulance to Port Huron Mercy Hospital. Radiology of the cervical spine revealed diffuse disc space loss at C5-6 and C6-7 with spondylosis. He was transferred to St. John Hospital in Detroit and underwent a C3-C7 laminectomy.

In rehabilitation, plaintiffs' decedent developed central cord syndrome with resulting quadriplegia. His mental status worsened and he became unresponsive, requiring intubation, mechanical ventilation, and ultimately required tracheotomy tube placement. Five months after the accident, Dupuy died from his injuries.

Plaintiffs asserted that damages were in order for pain and suffering and loss of society and companionship.

The defendants contended that plain-tiffs' decedent had a history of mental deficiency and was receiving Supplemental Security Income.

Further, it was asserted, plaintiffs' decedent did not suffer any conscious pain and suffering during his five months in the hospital.

The case was settled at mediation for $1,505,000.

Type of action: Wrongful death, third-party auto accident

Type of injuries: Death

Name of case: *Holcomb, et al., v. Seng Tire, Inc.*

Court/Case no./Date: St. Clair County Circuit Court; D-08-0000971-NI; Sept. 8, 2009

Tried before: Mediation

Name of judge: Peter E. Deegan

Name of mediator: Martin Waldman

Settlement amount: $1,505,000

Insurance carriers: Nationwide, Progressive

Attorneys for plaintiff: Michael P. Kavanaugh, Mark A. Vrana

Attorney(s) for defendant: Withheld

#15

Man in two accidents, seeks compensation

Plaintiff sustains left-eye blindness, brain injury, communication disorder

$1.5 million

HILBORN

RIDDLE

In a confidential automobile negligence lawsuit, the plaintiff sought compensatory damages following two motor vehicle accidents.

On March 10, 2008, plaintiff was a passenger in a motor vehicle when it was T-boned by a vehicle driven by defendant, who was within the course and scope of his employment. Plaintiff, a union employee, sustained a traumatic brain injury and left-eye blindness. He was disabled from employment.

On the eve of deposition, plaintiff, while a pedestrian, was struck by a vehicle that had entered his blind vision field. He sustained a second traumatic brain injury, this time developing Wernicke's Aphasia, a condition that profoundly affects communication. Each driver in both accidents was insured by the same insurance carrier.

Defendant asserted that plaintiff made a good recovery from the first accident, in which it would have had to admit liability. However, it was contended that the second accident, in which he was crossing the street at night and not in a crosswalk, caused the injuries that would completely disable him.

The case settled for $1.5 million through facilitation.

Type of action: Automobile negligence

Type of injuries: Traumatic brain injury, left-eye blindness

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; April 2, 2009

Name of judge: Confidential

Settlement amount: $1.5 million

Attorneys for plaintiff: Craig E. Hilborn, Kevin C. Riddle

Attorney(s) for defendant: Withheld

#15

Officials contend Meijer spearheaded conspiracy

Store chain admits secret financing to oust foes of new development

$1.5 million

GARVEY

Plaintiffs Robert Carstens and Clare David (Acme Township planning Commissioners), Ron Hardin, Erick Takayama and Frank Zarafonitis (township trustees), who formed the collective Concerned Citizens of Acme Township, asserted that defendants Meijer, Inc., the Village at Grand Traverse, former attorney Timothy Stoepker and law firm Dickinson Wright PLLC intentionally harmed the collective through a frivolous lawsuit, illegal campaign activity and secret financial support of a citizens group.

Meijer and the Village sought to build a 2.4 million-square-foot commercial and mixed-use development in the township. The township board approved the project, despite massive community opposition; in 2004, the board that approved the project was removed from office.

In 2005, while the new board was still in its infancy, Stoepker, representing both Meijer, Inc. and the Village at Grand Traverse, demanded that the plaintiffs recuse themselves from making decisions on the Village project.

When they refused to step down, they were sued, and Meijer, through Stoepker, hired a public relations firm to run a recall campaign — Acme Taxpayers for Responsible Government — against the trustees and overturn the township's temporary moratorium on large stores such as Meijer.

Through discovery in a related Michigan case, the plaintiffs discovered that Meijer had violated Michigan campaign finance law by secretly funding the recall campaign. Meijer acknowledged the secret financing and paid the state more than $190,000 in fines.

The lawsuit alleged that the purpose of the initial personal lawsuits and the recall campaign was to oppress the township officials in question and to inflict emotional distress upon them.

The case settled for $1.5 million, with Meijer and the Village paying the entire amount.

Type of action: Abuse of process, malicious prosecution,

Largest Settlements continued on page B12

LARGEST SETTLEMENTS

Continued from page B11

intentional infliction of emotional distress

Type of injuries: Mental distress with physical manifestations

Name of case: *Concerned Citizens of Acme Township v. Village at Grand Traverse, LLC, et al.*

Court/Case no./Date: Grand Traverse County Circuit Court; 05-24483-CH; April 29, 2009

Tried before: Mediation

Name of judge: Philip E. Rodgers Jr.

Settlement amount: $1.5 million

Attorneys for plaintiff: Robert F. Garvey, Michael Hayes Dettmer

Attorney(s) for defendant: Withheld

#15

Woman suffering with preeclampsia has fluid overload, dies

Defense: Mother delayed going to hospital for three hours after being told to go immediately

$1.5 million

McKeen

Dawes

In a confidential lawsuit filed in Wayne County Circuit Court, plaintiff's estate asserted defendant hospital and defendant physicians were negligent for preeclampsia mismanagement and for not referring decedent mother for obstetrical management.

Though a diagnosis of preeclampsia was made, once plaintiff's decedent was admitted to the hospital, a PA and obstetrician worsened her condition by causing iatrogenic fluid overload and failing to secure the patient's airway leading to a cardiopulmonary arrest, anoxic brain damage, and death.

Plaintiff asserted that compliance with the standard of care would have prevented death.

Defendants contended plaintiff could not articulate what else the doctor should have done other than evaluating the patient and recommending that she proceed immediately to the hospital for further evaluation. Further argued was that the mother was told to go directly to the hospital, but she did not, and delayed for more than three hours before going to the hospital.

The matter settled for $1.5 million.

Type of action: Medical malpractice, wrongful death

Type of injuries: Maternal birth injury, maternal death caused by failure to properly treat preeclampsia

Name of case: Confidential

Court/Case no./Date: Wayne County Circuit Court; Confidential; April 2009

Settlement amount: $1.5 million

Attorneys for plaintiff: Brian J. McKeen, Terry A. Dawes

Attorney(s) for defendant: Withheld

Key to winning: Focus on the defendants' failure to adequately identify and properly treat intrapartum problems

#16

Dehydrated woman has debilitating stroke

Medication discontinued, hospital contends physician not its agent

$1.4 million

In a confidential lawsuit filed in Washtenaw County Circuit Court, plaintiff asserted defendants were negligent for failing to prevent, recognize and treat severe dehydration and severe hypernatremia (elevated serum sodium), resulting in a debilitating stroke when blood clotted in her brain.

In early 2004, plaintiff presented to the hospital, complaining of nausea and vomiting. Examination and tests revealed that she suffered from dehydration and elevated sodium levels. She was on medication that regulated her urine output for her diabetes incipidus, a condition marked by the inability to control the loss of water.

Inexplicitly, one of the defendant physicians discontinued this medication, worsening the sodium elevation and dehydration she was already experiencing. Over a period of days, the woman's fluid deficit grew to 22,000 cc (5.8 gallons), ultimately resulting in a massive stroke, which caused severe brain damage.

Plaintiff was permanently disabled and unable to return to work as a mortgage banker.

Defendant hospital argued that defendant physician was not its agent under the doctrine of ostensible agency.

The matter settled for $1.4 million.

Type of action: Medical malpractice

Type of injuries: Stroke and permanent injury after failure to properly diagnose and treat severe dehydration and hypernatremia (elevated serum sodium)

Name of case: Confidential

Court/Case no./Date: Washtenaw County Circuit Court; confidential; May 2009

Settlement amount: $1.4 million

Attorneys for plaintiff: Brian J. McKeen, Terry A. Dawes

Attorney(s) for defendant: Withheld

#17

Former president asserts financial oppression

Defense claims buy-sell agreements were denied, but settlement is reached

$1.3 million

Etzel

Newman

Plaintiff Jerry Stakhiv was a 25 percent shareholder of defendant L.S. Brinker Co., a general contractor/construction services firm for which Stakhiv served as company president since 2000.

Defendants Larry Brinker and Donald Miller were the majority owners of L.S. Brinker, and also were owners of other closely related companies that did business with L.S. Brinker.

In a lawsuit filed in Wayne County Circuit Court, Stakhiv asserted that Brinker and Miller committed financial oppression against him by diverting profits from L.S. Brinker to affiliated companies with which Stakhiv possessed no interest. Because of this and other disagreements with Brinker and Miller, Stakhiv said he was forced to resign as president.

Stakhiv filed a complaint for shareholder oppression, breach of fiduciary duty and wrongful discharge, and sought unspecified damages and a buyout of his ownership interest.

Defendants asserted that Stakhiv volunteered to resign as president, denied the allegations of financial oppression, and maintained that they had no obligation to redeem Stakhiv's shares because Stakhiv refused to sign several buy-sell agreements that had been presented to him.

Before the close of discovery, the parties agreed to a buyout of Stakhiv's stock and his ownership interest in a related real estate entity for $1.3 million.

Type of action: Minority shareholder oppression, breach of fiduciary duty, wrongful discharge

Name of case: *Stakhiv v. L.S. Brinker Co., et al.*

Court/Case no./Date: Wayne County Circuit Court; 07-730560-CK; Jan. 7, 2009

Name of judge: Michael F. Sapala

Settlement amount: $1.3 million

Attorneys for plaintiff: Brian E. Etzel, Marc L. Newman

Attorney(s) for defendant: Withheld

#18

Supplier looks to set aside arbitration, is sued

Consulting group says its commission agreement couldn't be cancelled

$1.25 million

Holleman

In a breach-of-contract lawsuit filed in Macomb County Circuit Court, plaintiff Hutchinson FTS, Inc., an auto supplier, sought to set aside an arbitration provision in a consultancy agreement it had with defendant CT Charlton & Associates, a sales rep agency.

Charlton, who initially pursued arbitration against Hutchinson, countersued for breach of the consultancy agreement when Hutchinson attempted to terminate the agreement and failed to pay commissions and monthly retainers.

Charlton sought compensatory damages based on a percentage of the sales Hutchinson and its affiliates made to the specific customers that were listed as the subject of the agreement.

Documents presented by Charlton showed admissions by, and acknowledgements from, Hutchinson employees, officers and others at the parent company that Hutchinson would not have been able to land the business it did with automobile and other manufacturers without Charlton's assistance.

Further, terms of Charlton's agreement with Hutchinson were parsed by the defense in an effective way to show case evaluators that it was not cancellable as asserted by Hutchinson.

It was asserted that the obligation to pay Charlton was not dependent upon any particular effort made for a certain part; rather, if Hutchinson got business from a manufacturer, Charlton would be owed commissions so long as the manufacturer continues to make the automobile that incorporated the Hutchinson part.

The case evaluation of $1.25 million in favor of Charlton was accepted by both sides.

Type of action: Breach of Contract

Type of injuries: Monetary damages

Name of case: *Hutchinson FTS, Inc. v. C.T. Charlton & Associates, Inc.*

Court/Case no./Date: Macomb County Circuit Court; 06-3068-CK; Feb. 11, 2009

Tried before: Mediation

Name of judge: James M. Biernat

Mediation award: $1.25 million

Attorney(s) for plaintiff: Withheld

Attorney for defendant: Todd Holleman

Key to winning: Tenacious pursuit of discovery and effective presentation of facts to case evaluators

#18

Man's damages after accident are disputed

Defense says life after brain injury returned to what it was; case settles

$1.25 million

In a lawsuit filed in Otsego County Circuit Court, plaintiff Brandon Inglehart sought damages following an accident in which he was hit, while riding a bicycle, by a truck driven by defendant Darren Zimmerman.

Inglehart was riding his bicycle in single-file formation with a friend on the right side of the fog line. Zimmerman was driving in a truck owned by defendant Manthei Development Corp., began drifting to the right, and crossed the fog line, hitting the bicyclers at about 55 mph.

Inglehart lay unconscious and was taken via helicopter to Munson Medical Center in Traverse City, where he was diagnosed with multiple brain bleeds and two spinal fractures (T9 and T10).

Inglehart recovered, but had ongoing treatment through physical therapy, audiology and medicine. After several months, he was forced to retire from a career in teaching because of brain injury complications.

The plaintiff said that damages were warranted because of the complications of the brain injury.

The defense contended that the plaintiff didn't meet the threshold for damages in the injury, citing a return to his normal lifestyle by way of competitive mountain biking less than a year post-injury. A neuropsychologist testified that the plaintiff had no cognitive impairments, and a vocational counselor said there were other jobs the plaintiff could take besides teaching.

The case went to trial, but, once the jury was out for three hours, a $1.25 million settlement was reached.

Type of action: Auto negligence

Type of injuries: Closed-head injury, spinal compression fracture

Name of case: *Inglehart, et al., v. Manthei Development Corp., et al.*

Court/Case no./Date: Otsego County Circuit Court; 07-12348-NI; March 12, 2009

Name of judge: Janet Allen

Settlement amount: $1.25 million

Insurance carrier: Liberty Mutual

Attorney for plaintiff: Blake K. Ringsmuth

Attorney(s) for defendant: Withheld

#19

Carrier, estate clash over life insurance contract

Court: No requirement to inform on health changes unless in policy

$1.1 million

In a lawsuit filed in U.S. District Court, Eastern District of Michigan, defendant/counter-plaintiff Sentry Life Insurance Co. sought to rescind two policies against plaintiff's/counter-defendant's decedent Douglas Severns, former CEO of A&M Supply.

Plaintiffs/counter-defendants Susan Severns and A&M, the beneficiaries of two separate $500,000 Sentry life insurance policies, countersued for breach of the life insurance contracts, and seeking a declaration of insurance coverage.

Sentry based its rescission claims for the two policies on the basis of a purported "change in health" that occurred approximately two weeks after plaintiff's decedent Severns submitted a written application for the policies, and two weeks before his actual receipt of the life insurance policies. The change in health that Sentry claimed as its basis for rescission was an emergency room visit by Severns in November 2006 for minor complaints unrelated to his ultimate cause of death 10 months later.

Sentry asserted that Severns had a duty to inform Sentry of the emergency room visit, and that had he done so, Sentry would have refused to issue the life insurance policies. However, plaintiff's estate and A&M asserted, Sentry's application and policies did not contain any language requiring plaintiff's decedent to inform Sentry of subsequent doctor visits or any purported change in health after the date of the application for insurance.

The court agreed with the beneficiaries that, absent specific insurance policy language, Michigan law imposes no requirement on an insured to inform a life insurer of these matters.

The case was decided in favor of beneficiaries Susan Severns and A&M, on cross-motions for summary judgment argued April 6, 2009. The parties reached a $1.1 million settlement in which Sentry would pay the beneficiaries the full policy limits, in addition to a sum as interest based upon the delay in timely paying life insurance proceeds.

Type of action: Breach of life insurance contract

Name of case: *Sentry Life Insurance Co. v. Severns, et al.*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 2:08-CV-11453; May 2009

Name of judge: Anna Diggs Taylor

Settlement amount: $1.1 million

Attorneys for plaintiffs/counter-defendants: Christopher J. Hastings, Douglas Young

Attorney(s) for defendant/counter-plaintiff: Withheld

#20

Policy was denied because of driving 'misrepresentation'

But plaintiff's estate says speeding tickets were not, by law, convictions

$1,063,000


GARVEY

In a lawsuit filed in Macomb County Circuit Court, the estate of Terry Garmen asserted that it was owed $1 million in a life insurance payment issued by defendant West Coast Life after plaintiff's decedent died in an accident.

Terry Garmen purchased a $1 million insurance policy with West Coast Life, based on the recommendation of West Coast's agent who believed that Garmen was underinsured at $500,000.

His wife also purchased a policy of life insurance at the same time, and was with her husband when questions on the application form were asked.

On June 29, 2007, Garmen died in a boating accident, which was within the two-year contestability period. West Coast sent the application out to an investigative agency to find "misrepresentations" on the insurance application form. One of the questions asked whether within the last five years the plaintiff had been convicted of three or more moving violations.

Garmen's wife's said his response, after having the question read to him, was, "I have never been convicted of anything." Garmen's wife contended that the agent assured them that this question only applied to such things as drunken driving and driving on a suspended license, and did not include routine traffic tickets.

When the investigative agency secured Garmen's driving record, it was discovered that he had in fact had four moving violations within the last five years. Two of those traffic citations were for "energy speeds," and one was for driving 5 mph over the speed limit. As such, West Coast denied payment of the life insurance proceeds based on this "misrepresentation" by the deceased.

Plaintiff asserted that the word "conviction" did not apply to moving violations in Michigan since, by state law, moving violations are "civil infractions," and the word "conviction" only applies to misdemeanors such as drunken driving and driving on a suspended license.

In addition, the plaintiff contended, the "misrepresentation" did not meet the test of materiality, which, in Michigan, means that the fact misrepresented "significantly increased the likelihood of the event insured against."

The defendant countered by arguing that Michigan law was that, as long as the insured can show that they would have charged an increased premium had the question been answered differently, they were justified in denying the claim.

The arbitration panel awarded $1,063,000 to the plaintiff.

Type of action: Insurance claims

Type of injuries: Death

Name of case: *Garmen v. West Coast Life*

Court/Case no./Date: Macomb County Circuit Court; 07-5002-CK; September 2009

Tried before: Arbitration

Name of judge: Richard L. Caretti

Demand: $1 million plus attorneys fees and exemplary damages

Highest offer: $150,000

Arbitration award: $1,063,000

Attorney for plaintiff: Robert F. Garvey

Attorney(s) for defendant: Withheld

#21

Delivery leaves child's left arm disabled

Defense: Birth trauma was 'surprise nightmare,' injuries unpreventable

$1 million

In a confidential lawsuit filed in Wayne County Circuit Court, plaintiff asserted defendant was negligent when plaintiff minor suffered birth trauma, leaving her left arm permanently disabled.

Plaintiff minor's prenatal course was uneventful up to the morning of her birth in 1999. The mother arrived at the hospital shortly after midnight. Around 4:45 a.m., the fetal heart monitor began to show decelerations, tachycardia and decreased variability. This pattern worsened significantly around 6:45 a.m., and continued for 40 minutes without intervention.

Plaintiff's experts opined that the standard of care required the baby be delivered at 7:15 a.m. Instead, the child was delivered at 8:01 a.m. with APGAR scores of 3, 4 and 6 at 1, 5 and 10 minutes, requiring neonatal resuscitation.

As a result of the mismanaged labor and delivery, the little girl suffered from Erb's Palsy, leaving her left arm permanently disabled.

Plaintiff asserted that the defendants failed to identify and respond to an arrest of descent; the presence of meconium; baseline tachycardia; fetal distress; shoulder dystocia; and amnionitis by maternal fever greater than 104 F.

Defendants claimed that the child's injuries were a "surprise nightmare" and unpredictable, causing injuries that were unpreventable.

The matter settled for $1 million.

Type of action: Medical malpractice

Type of injuries: Birth trauma, causing brachial plexus injury, manifested as Erb's Palsy of the left arm

Name of case: Confidential

Court/Case no./Date: Wayne County Circuit Court; Confidential; July 2009

Settlement amount: $1 million

Attorneys for plaintiff: Brian J. McKeen, Terry A. Dawes

Attorney(s) for defendant: Withheld

Key to winning: Focus on the defendants' failure to adequately identify and properly treat intrapartum problems

#21

Passenger dies after drunken-driving crash

Bar's policies on serving alcohol violated, confirmed by testimony

$1 million

In a confidential dram shop lawsuit, the estate of the plaintiff's decedent asserted that the defendant restaurant/bar served alcoholic beverages to an allegedly intoxicated person (AIP), resulting in the injury or death of plaintiff's decedent.


CURTIS


WILCZYNSKI

The plaintiff contended that the AIP became so intoxicated while at the restaurant/bar that his friends had to encourage him to slow down and leave the bar.

Later, the AIP got behind the wheel of his SUV with the plaintiff's decedent as his passenger in the back seat. The AIP subsequently crashed his vehicle into the rear end of a street sweeper and was killed, while the plaintiff's decedent suffered a fracture at C2-C3, was rendered a quadriplegic, and died 30 days later in the hospital.

The defendant asserted that the AIP only became intoxicated after he had his last drink and, at the time he was being served, was not demonstrating visible signs of intoxication. Therefore, there was no unlawful serving of alcohol in violation of the Dram Shop Act.

In addition, the defense contended there was significant comparative negligence on behalf of the plaintiff's decedent for getting into the SUV with the AIP when he knew the AIP was intoxicated.

Plaintiff's counsel was able to find a number of witnesses who were present on the night in question and provided direct eyewitness testimony as to the state of intoxication of the AIP.

Also, the defendant restaurant/bar's policies and procedures manual was obtained, and based upon the testimony elicited from the waitress, numerous internal policies had been violated throughout the evening in serving the AIP.

The case was settled at facilitation for $1 million.

Type of action: Dram shop

Type of injuries: Death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; May 20, 2009

Name of judge: Withheld

Settlement amount: $1 million

Attorneys for plaintiff: Matthew Curtis, Nicole A. Wilczynski

Attorney(s) for defendant: Withheld

#21

Construction worker shocked, falls 3 stories

Defendant says it didn't act as contractor, had no jobsite control

$1 million

In a personal injury and negligence lawsuit filed in Oakland County Circuit Court, plaintiff Jackie Miller sought compensatory damages from defendant Kemp & Sherman Co. following a construction site accident.

On Feb. 21, 2007, Miller, an employee of Mound Steel, was working on the roof of a three-story building in Madison Heights. Miller and his co-worker were pulling corrugated steel sheets (utilized as roofing material), placing them over steel trusses, and then tack-welding them in place.

That day, the leads of the welding gun had accumulated moisture, when Miller attempted to tack-weld a portion of the roof, he received an electric shock. He was thrown backward and through an area that not did yet have roofing sheets, resulting in his falling three stories onto the frozen ground. Miller suffered an open-skull fracture, traumatic brain injury, elbow and wrist fractures.

Plaintiff was not wearing any type of tie-off or fall protection, and testified in deposition that to request such equipment would get him fired.

Plaintiff asserted that, because Kemp & Sherman was the general contractor and had exclusive control of the jobsite, defendant was negligent under the theory of premises liability and the common work area doctrine.

Defendant contended that it did not act as the general contractor for the project, as it neither "retained" control nor did it exercise "actual" control of the jobsite. Thus, it was asserted, defendant had no duties in relation to the plaintiff.

The matter settled in facilitation for $1 million.

Type of action: Personal injury, negligence

Type of injuries: Open-skull fracture, traumatic brain injury, elbow and wrist fractures

Name of case: *Miller, et al., v. Kemp & Sherman Co.*

Court/Case no./Date: Oakland County Circuit Court; 08-094165; Sept. 1, 2009

Tried before: Facilitation

Name of judge: Lisa Gorcyca

Name of facilitator: Joseph G. Lujan

Settlement amount: $1 million

Insurance carrier: Indiana Insurance Co.

Attorneys for plaintiff: Daniel J. Flaggman, Eric D. Geller

Attorney(s) for defendant: Withheld

CLASS ACTIONS

#1

Women prisoners say employees abused them

500-plus claimants say MDOC knew of routine assaults, did nothing

$100 million


LABELLE


M.L. PITT


SOBLE


P.G. PITT


MCGEHEE

In a class-action lawsuit filed in Washtenaw County Circuit Court, more than 500 female inmates who are, or were, incarcerated in Michigan prisons from March 27, 1993, and July 14, 2009, sought damages for claims of sexual abuse, assault and harassment from Michigan Department of Corrections (MDOC) male employees.

The lawsuit, first filed in 1996, asserted that, over a 15-year period, the plaintiffs were forced by male MDOC guards at select women's prisons to engage in sexual intercourse, oral sex, digital penetration, groping, verbal harassment, prurient viewing while nude or partially clothed.

The defense contended it had no knowledge of the assaults, and, as such, could not prevent them from occurring.

But the plaintiffs asserted the MDOC administration knew the class members were in a hostile prison environment, the harassment and assaults were pervasive, and did not take appropriate and remedial action to prevent further harm to the women.

Constructive notice was built from MDOC records of complaints made by inmates in the now-shuttered Robert Scott Correctional Facility in Plymouth Township.

On Feb. 1, 2008, a Washtenaw County Circuit Court jury awarded the 10 plaintiffs in the *Neal, et al., v. Michigan Department of Corrections, et al.* case $15.6 million in damages. On Dec. 30, 2008, the *Anderson, et al., v. Michigan Department of Corrections, et al* claim, for eight female prisoners, resulted in a judgment of $8.45 million in damages.

Before the State of Michigan agreed to a $100 million settlement on July 15, 2009, the remaining plaintiffs with outstanding claims would have been tried in groups of no more than 10 plaintiffs at a time.

As part of the agreement, the plaintiffs in the *Neal* trial will receive 67 percent of their jury award, while the *Anderson* plaintiffs will receive 65 percent of their award.

Also, plaintiffs in two satellite suits, *Mason, et al., v. Granholm*, in U.S. District Court, Eastern District of Michigan, and *LaCross, et al., v. Zang, et al.*, in Washtenaw County Circuit Court, are eligible for compensation as part of the *Neal* and *Anderson* settlement funds.

Type of action: Civil rights under the Elliott-Larsen Civil Rights Act

Type of injuries: Sexual abuse, sexual assault, degrading treatment

Names of cases: *Neal, et al., v. Michigan Department of Corrections, et al.; Anderson, et al., v. Michigan Department of Corrections, et al.*

Courts/Case nos./Date: Washtenaw County Circuit Court (*Neal*), Court of Claims (*Anderson*); 96-6986-CZ (*Neal*), 03-162-MZ (*Anderson*); July 15, 2009

Tried before: Judge

Name of judge: Timothy P. Connors

Settlement amount: $100 million

Attorneys for plaintiff: Deborah A. LaBelle, Michael L. Pitt, Richard A. Soble, Molly Reno, Patricia Streeter, Peggy Goldberg Pitt, Cary S. McGehee, Ralph J. Sirlin, Ronald J. Reosti

Attorney for defendant: Assistant Michigan Attorney General John L. Thurber

#2

Company falsely claimed revenues and earnings

Stock drops as 'material irregularities' are not limited to just one sector

$20 million


MILLER


NEWMAN

In a securities fraud class-action lawsuit filed in U.S. District Court, Eastern District of Michigan, the plaintiffs alleged that during the class period, ProQuest Co., a leading publisher of solutions for the education, automotive and power equipment markets, falsely claimed consistent and increasing revenues and earnings.

The case, brought by lead plaintiffs B.V. Brooks, John L. Marocchi and Sales Marketing Group, MPP, asserted defendant ProQuest and individual defendants James P. Roemer, Alan Aldworth, Kevin Gregory and Scott Hirth violated sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

Plaintiffs alleged that during the class period, ProQuest, a leading publisher of solutions for the education, automotive and power equipment markets, falsely claimed consistent and increasing revenues and earnings.

Plaintiffs contended that, despite defendants' representations to the contrary, ProQuest's results were not the product of a well-executed business plan. Rather, the company's seemingly positive revenue and earnings results were dependent on a variety of improper and fraudulent accounting manipulations.

On Feb. 9, 2006, ProQuest announced that "material irregularities" had been discovered in its accounting. As a result, the company intended to restate certain of its previously issued financial statements for 1999 through the first three quarters of 2005.

Following the Feb. 9 announcement, ProQuest stock declined by 18 percent that day on heavy trading volume.

At the same time, plaintiffs alleged, ProQuest stated that the irregularities identified until that point primarily affected only one of the company's business segments, the PQIL division, and excluded ProQuest's other business segments.

Thus, according to plaintiff's arguments, the defendants created the impression that the accounting fraud was limited in scope to the PQIL division.

The company later stated that an audit committee investigation concluded that the accounting fraud was committed by a rogue employee.

On Dec. 15, 2006, prior to the opening of the markets, ProQuest acknowledged the full scope of the accounting irregularities, stating for the first time that accounting issues were not isolated to PQIL, but had also permeated the company's other business units, requiring a restatement of earnings from 2001 through 2005.

Following these disclosures, the company's stock price dropped 27 percent from its prior day close

The defendants each filed motions to dismiss, which were denied by the court, and subsequently settled the suit for $20 million.

Type of action: Securities fraud (class action)

Type of injuries: Loss in value of securities due to false and misleading statements about defendant's earnings

Name of case: *In re Proquest Securities Litigation*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 06-CV-10619; March 30, 2009

Name of judge: Avern Cohn

Settlement amount: $20 million

Attorneys for plaintiff: E. Powell Miller, Marc L. Newman, Joel Strauss, Michael Yarnoff

Attorneys for defendants: Withheld

#3

Foul odors from landfill prompt residents to sue

Settlement terms include upgrading facilities, using 'gas-to-green' plan

$18.76 million


MANTESE


MACUGA


ROSSMAN

In a class-action lawsuit filed in Macomb County Circuit Court, a class of residential property owners in Lenox Township and Casco Township sought compensation and facility improvements from defendant Waste Management of Michigan, Inc. stemming from a landfill's noxious odors.

Plaintiffs asserted that the Pine Tree Acres Landfill in Lenox Township, owned and operated by Waste Management of Michigan, was emitting odors, which constituted a public nuisance and gave rise to violations of the Michigan Environmental Protection Act.

The $18.76 million settlement requires defendants to enhance gas collection, destruction and processing capacity at the landfill on a long term-basis by drilling additional wells and installing a "gas-to-green" energy facility at a cost of $15 million.

The settlement agreement also requires defendant to expend a minimum of $2.2 million in various other capital improvements for gas collection and destruction at the landfill, and another $810,000 for the installation of gas collection wells, gas collection piping, and additional gas processing capacity through the addition of new flares.

Under the settlement agreement, defendant is required to hire a new gas technician employee at a minimum salary of $40,000 per year. The settlement agreement also provides for monetary damages of $750,000.

Type of action: Environmental class action

Type of injuries: Public nuisance, MEPA violations

Name of case: *Hellebuyck, et al., v. Pine Tree Acres, Inc., et al.*

Court/Case no./Date: Macomb County Circuit Court; 09-3796-CZ; Dec. 14, 2009

Tried before: Facilitation

Name of judge: Donald G. Miller

Name of facilitator: Richard A. Soble

Settlement amount: $18.76 million

Attorneys for plaintiff: Gerard V. Mantese, Peter W. Macuga II, Mark C. Rossman

Attorney(s) for defendant: Withheld

#4

Company's efforts to cover up strategy fail

Misleading financial statements were issued to raise stock price

$10.8 million

In a class-action lawsuit filed in U.S. District Court, Eastern District of Michigan, the plaintiffs asserted that defendant Collins & Aikman Corp. (C&A) and several of its former officers and directors engaged in securities fraud.

The plaintiffs assert that, in order to achieve a "Mega Tier 2" supplier designation, C&A had undertaken a risky acquisition strategy.

However, it was contended, that C&A had no viable plan to integrate these acquisitions and that it was unable to handle the size of its new business and disarray

erupted at many of its plants.

Further, when it became apparent that its integration strategy was failing, C&A and its co-defendants deceived the market by reporting that the integration strategy was successful, thus issuing materially false and misleading financial statements.

Subsequently, plaintiffs alleged that defendants intended to capitalize on the substantial increase in C&A's stock price caused by their materially false and misleading statements with respect to C&A's financial condition and prospects by selling their C&A shares to the public at artificially inflated prices.

To this end, C&A's owner filed with the SEC, on April 17, 2002, a registration statement that would enable C&A to raise as much as $1 billion through the sale of common stock and debt and preferred securities.

The plaintiffs contended that the truth became apparent Aug. 5, 2002, when C&A revealed that it was not growing into a more prosperous company. Instead, it was losing money, and substantially more than had been anticipated, based on the company's statements about its financial condition and prospects.


MILLER


NEWMAN


FINK

The company reported a net loss of $20.3 million, or $0.29 per diluted share, compared with net income of $9.2 million, or $0.11 per diluted share a year earlier; and expected 2002 earnings of $0.20 to $0.26 per share, well below the consensus estimate of $0.74 per share.

The lawsuit settled for $10.8 million.

Type of action: Class-action securities fraud

Type of injuries: Loss in value of securities stemming from false and misleading statements about Collins & Aikman's earnings

Name of case: *In re Collins & Aikman Securities Litigation*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 03-CV-71173-GER; July 30, 2009

Name of judge: Gerald Rosen

Settlement amount: $10.8 million

Attorneys for plaintiff: E. Powell Miller, Marc L. Newman, David H. Fink, Barry Weprin

Attorney(s) for defendant: Withheld

#5

Sewerage billings unlawful, says lawsuit

City broke ordinance charging housing groups for waste control

$3 million

In a class-action lawsuit filed in U.S. District Court, Eastern District of Michigan, a class of multifamily residential housing groups sought compensation after defendant city of Detroit imposed unlawful charges on sewerage billings.

In 2007, it was discovered that the city was charging multifamily residential housing complexes, such as apartment buildings and housing cooperatives, an industrial waste control charge. This was in contradiction to the city's own ordinance, which prohibited such a charge to these housing groups.

Plaintiffs asserted violation of equal protection, as well as a count for restitution for the inappropriate assessment, which, by law, is a lien on the property as soon as the charge is assessed.

Defendant responded by raising the affirmative defenses of governmental immunity and the voluntary payment doctrine.

The case settled for $3 million, which was credited on the water and sewerage bills of more than 2,000 customer accounts in the city.

Type of action: Class action

Type of injuries: Monetary damages for fees charged on sewerage bills

Name of case: *Village Center Associates Limited Division Housing Association, et al., v. City of Detroit*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 2:07-CV-12963; Feb. 3, 2009

Name of judge: John Feikens

Settlement amount: $3 million

Attorneys for plaintiff: Carl G. Becker, Mark K. Wasvary

Attorney(s) for defendant: Withheld

#6

Factory emissions cause hazards for residents

Property damage across Alpena, toxin exposure asserted in suit

$1.9 million


LIDDLE

In a class-action lawsuit filed in U.S. District Court, Eastern District of Michigan, a class of 3,600 people sought current and future personal and real property damages, diminution in property value, and damages for various detrimental health effects caused by the emission of toxic pollutants from a cement plant.

The plaintiffs, who owned single-family residences in Alpena, asserted that, throughout defendant Lafarge Corp.'s ownership and operation, the plant produced hazardous toxic waste and created emissions with hazardous byproducts.

For example, the cement dust emitted by the plant penetrated into the siding on houses, killed shrubbery, and left a white film over houses and vehicles in the city. Also, hydrochloric acid, a byproduct of the cement manufacturing process, degraded roofs, piping, concrete and the aluminum windows and doors of some homes.

Further, the plaintiffs contended to have been exposed to numerous carcinogenic, mutagenic, and teratogenic toxic substances, which increased risk of cancer, impaired immunological function and caused birth defects and developmental abnormalities.

In 1994, the MDEQ and Lafarge entered into a consent decree, in part, to remedy Lafarge's emission of air contaminants. However, Lafarge violated the terms of the decree, resulting in the accrual of more than $5.4 million in stipulated penalties as of May 2003.

In 2000, the consent decree was amended, requiring Lafarge's further compliance with statutory air pollution requirements.

In the 6th U.S. Circuit Court of Appeals and the U.S. Supreme Court, the defendant appealed the U.S. District Court's October 2001 decision to grant the plaintiffs' motion to certify the class action. The appeals were denied.

The plaintiffs and defendant agreed to a $1.9 million settlement. The defendant also agreed to allocate $700,000 to install pollution abatement equipment and pave roads as a means of reducing offsite emissions.

Type of action: Class-action litigation

Type of injuries: Damages arising from the release of fugitive dust and air contaminants emitted from defendant's facility

Name of case: *Olden, et al., v. Lafarge*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 99-10176; March 23, 2009

Name of judge: David M. Lawson

Settlement amount: $1.9 million

Attorney for plaintiff: Steven D. Liddle

Attorney(s) for defendant: Withheld

Key to winning: Extensive use of Freedom of Information Act to obtain documents necessary to demonstrate liability

#7

Blue Cross OKs autism class-action settlement

Insurer's documents say treatment is 'standard of care,' not 'experimental'

$1 million


CONWAY


MANTESE

In a class-action lawsuit filed in U.S. District Court, Eastern District of Michigan, the family of plaintiff-minor sought damages after asserting that defendant insurer Blue Cross Blue Shield of Michigan wrongfully refused to cover behavioral therapy for children with autism spectrum disorder (ASD).

The plaintiff contended that Blue Cross' pattern and practice of characterizing the scientifically established Applied Behavioral Therapy as "experimental," and thus, as excluded under its insurance policies, was arbitrary, capricious, illegal and contradicted by many years of scientific validation.

The case settled for $1 million shortly after plaintiff's counsel obtained a court order requiring Blue Cross to produce file documents that validated the effectiveness of Applied Behavioral Analysis (ABA) therapy for treating children with ASD. Among the documents in the Blue Cross files obtained by plaintiff's counsel were Blue Cross Blue Shield Medical Policies for 2005, 2008 and 2009, which acknowledged:

- "Applied behavioral analysis is currently the most thoroughly researched treatment modality for early intervention approaches to autism spectrum disorders and is the standard of care recommended by the American Academy of Pediatrics, National Academy of Sciences Committee and the Association for Science in Autism Treatment, among others."
- "The earlier the disorder is diagnosed, the sooner the child can be helped through treatment interventions."

Under the terms of the settlement, Blue Cross agreed to reimburse all families who paid for behavioral therapy for their children after May 1, 2003, and who were covered under a Blue Cross Blue Shield of Michigan insurance policy.

Blue Cross agreed to class certification per a binding settlement placed on the record, and the court is expected to give approval come the end of the month.

Type of action: Claim under the Elliott-Larsen Civil Rights Act alleging that plan administrator acted arbitrarily and capriciously

Type of injuries: Denial of insurance benefits

Name of case: *Johns v. Blue Cross Blue Shield of Michigan*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 08-cv-12272; June 17, 2009

Tried before: Facilitation

Name of judge: Stephen J. Murphy III

Name of facilitator: Michael J. Hluchaniuk

Settlement amount: $1 million

Most helpful experts: Ruth Anan, Ph.D., and Lori Warner, Ph.D., both of William Beaumont Hospital HOPE Center

Attorneys for plaintiff: John J. Conway, Gerard V. Mantese

Attorney(s) for defendant: Withheld

Top national verdicts show $145M as the average

The top 10 national jury verdicts didn't have as dramatic an increase in 2009 as it did in 2008, but the average rose again, from $112 million to nearly $145 million.

The top award, a defamation suit, was slightly lower in 2009 — $370 million versus 2008's $388 million. But two other awards in the $300 million range, along with five verdicts of $70 million or more, helped push the average appreciably higher than last year.

Seven of the top 10 verdicts stemmed from personal-injury cases, and includes two drunken-driving accidents, one $300 million tobacco verdict, and one verdict in the ongoing Prempro litigation against Wyeth Pharmaceuticals.

'Choi v. Marciano,' California, $370 million

After a bizarre trial, a Los Angeles jury awarded a record defamation verdict of $370 million, including $25 million in punitive damages, to five former employees of Guess Jeans mogul Georges Marciano.

The plaintiffs claimed that Marciano falsely accused them of stealing from him and used his wealth and connections to dog them with investigations, tax audits and accusations in newspaper ads and on Web sites.

Marciano, the creative genius behind the company that popularized denim in the 1980s, set off the litigation in 2007 when he sued his former employees for fraud and conspiracy to steal more than $400 million worth of assets, including items from his art, wine and coin collections. His suit was dismissed.

Choi v. Marciano involved counterclaims brought by the ex-employees for defamation and intentional infliction of emotional distress. The plaintiffs had already won on liability after a bench trial; the jury was there to decide damages only.

In a weird legal twist, because Marciano repeatedly failed to show up for his deposition, the trial judge struck his answer and refused to allow his attorneys — and there were many — to participate in either trial: no opening, no closing, no witnesses.

The judge had opened the door to punitive damages by finding Marciano's conduct "malicious and oppressive" during the liability phase.

David Wheeler of Wheeler & Sheehan in Westlake Village, Calif., argued the punitive damages portion of the trial. His key witness was Marciano's former accountant who testified he had seen a document showing Marciano's net worth was $300 million, Wheeler said.

Wheeler made a decision not to suggest an amount, instead leaving it entirely up to the jury.

"We wanted it to be a message he could not ignore that came from the jury, not from me, not from my clients," Wheeler said.

Type of case: Defamation

Status: Defendant has appealed the verdict to the state court of appeal. Three of the five plaintiffs have filed an involuntary bankruptcy petition against the defendant, staying the appeal.

'Stone v. Marcone,' Florida, $330 million

An all-woman jury heard Angela Stone describe her 13-year-old daughter's death after a drunken-driving accident in April 2007. Then, after deliberating less than an hour, the jury ordered the man who killed Stone's daughter, Shelby Taylor Hagman, to pay $330 million in damages. It is believed to be the largest DUI verdicts in the nation.

Police reports showed that the blood alcohol level of the driver of the pickup, Christopher Marcone, was .207 — more than twice the legal limit.

While it is unlikely Stone will collect any of the punitive damages, she will receive some portion of the compensatory damages thanks to a confidential agreement that was reached with the drunk driver and his insurance company as the trial began, according to Yerrid.

Steve Yerrid, Stone's attorney, has filed a wrongful death suit against Kia Motors on behalf of Stone, alleging that a defective seatbelt system contributed to Shelby's fatal injuries.

Type of case: Wrongful death

Status: No change.

'Naugle v. Philip Morris USA,' Florida, $300 million

A plaintiff suffering from severe emphysema was awarded $300 million in Broward County, Fla., against Philip Morris.

It was the 10th of the *Engle* cases, which involve individual trials to determine if a plaintiff was addicted to cigarettes and whether that addiction caused his or her injury.

Of the eight plaintiffs' victories to date, this verdict — comprised of $56.6 million in compensatory damages and $244 million in punitive — is far and away the largest.

In addition, while juries in prior cases have apportioned fault to the plaintiff ranging from 34 percent to 57 percent, jurors determined that Cindy Naugle was just 10 percent at fault.

Type of case: Product liability and negligence

Status: Defendant plans appeal.

'Riegel v. Zerna,' Missouri, $89 million

The family of a Missouri man killed by a drunken driver was awarded $89 million in a trial that lasted only one day.

That was enough time for jurors to "send a message to the community about the dangers of drunk driving," said plaintiffs' attorney Steven Bronson of St. Louis.

Bronson said that he tried the case with a theme of trying to send a message with the verdict. The plaintiffs did not call any expert witnesses, such as accident reconstructionists or economists. Rather, the only testimony came from state troopers at the scene of the February 2008 crash and the victim's family.

Type of case: Wrongful death

Status: Undetermined as of yet.

'Barton v. Wyeth Pharmaceuticals,' Pennsylvania, $78.75 million

In the largest individual hormone replacement therapy verdict so far, a New Jersey jury awarded $78.75 million in damages to an Illinois woman who claimed the hormone therapy replacement drug Prempro caused her breast cancer.

Connie Barton, 64, took Prempro between May 1997 and May 2002. Barton underwent a left mastectomy and reconstructive surgery following her breast cancer.

In a reverse trifurcated trial, an eight-person jury awarded Barton $3.75 million in compensatory damages and determined that Wyeth's Prempro caused her invasive breast cancer. Jurors also found that the pharmaceutical maker deliberately ignored evidence that Prempro could cause cancer.

In late October, the same jury awarded $75 million in punitive damages to Barton, but the amount was sealed for a month until Nov. 23, when a related trial in Philadelphia was completed.

Type of case: Product liability

Status: Post-trial motions have been filed by the defense.

'Baizan v. St. John's Riverside Hospital,' New York, $77.4 million

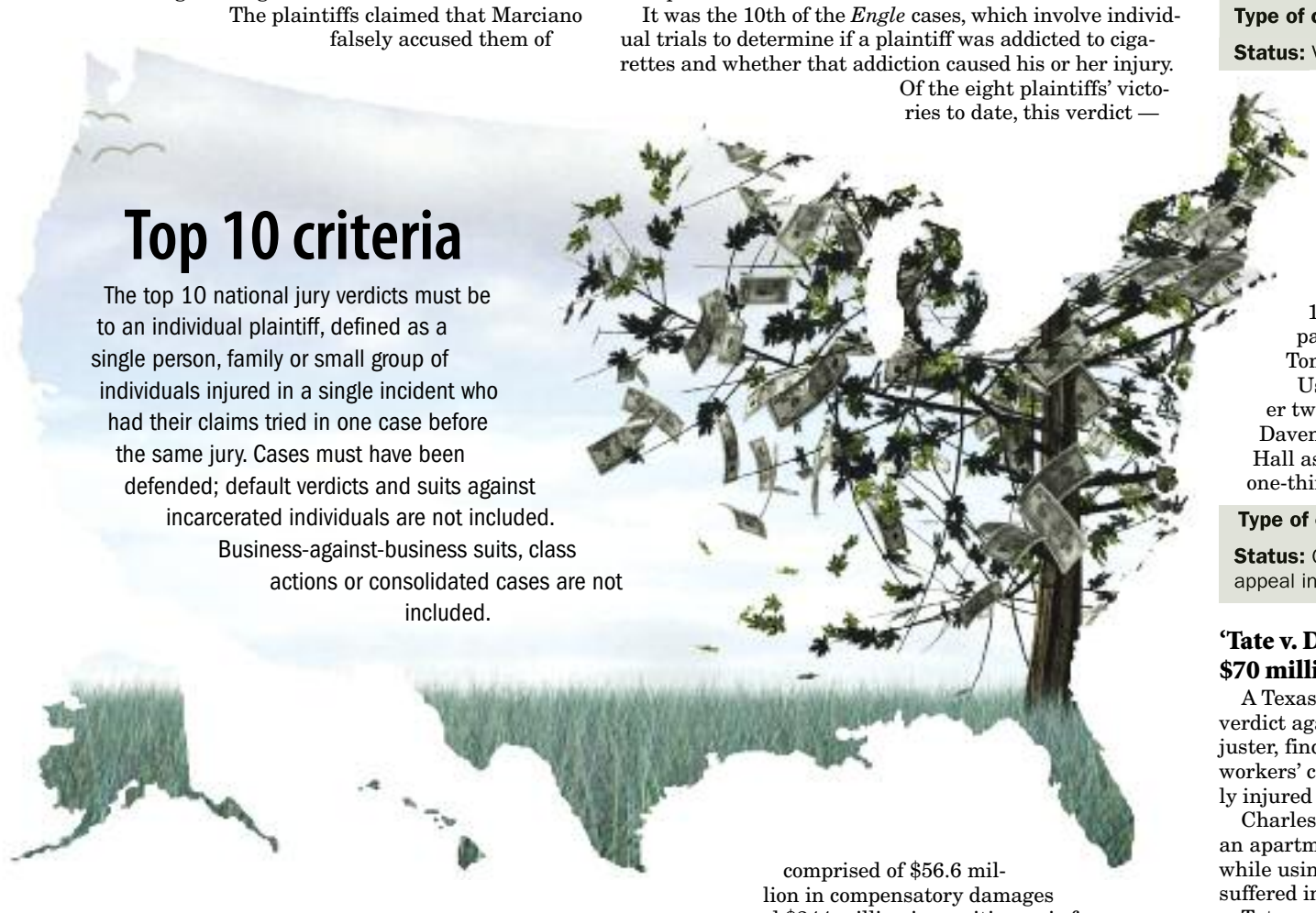
In one of the largest medical-malpractice verdicts in the history of New York's Westchester County, a jury has awarded $77.4 million to the parents of Diego Baizan.

Diego, now 3, suffers from severe cerebral palsy and constant seizures as a result of injuries sustained during his birth in February 2006. Today, he is blind, suffers from constant seizures, cerebral palsy and severe developmental delays, and requires feeding through a tube.

The plaintiffs argued that a Caesarian section should have been performed, but that didn't happen because the hospital was short-staffed. They also argued that the fetal heart monitor readings showed that Diego needed to be delivered immediately, but doctors waited more than an hour. Further, an anesthesiologist wasn't called, even though that's standard procedure with abnormal readings.

Type of case: Medical malpractice

Status: Verdict upheld on appeal and will be paid in full.



Top 10 criteria

The top 10 national jury verdicts must be to an individual plaintiff, defined as a single person, family or small group of individuals injured in a single incident who had their claims tried in one case before the same jury. Cases must have been defended; default verdicts and suits against incarcerated individuals are not included. Business-against-business suits, class actions or consolidated cases are not included.

'Davenport v. Allen,' Texas, $71 million

Alleging conversion and breach of fiduciary duty, one partner in a three-man water drilling company won $71 million against his partners after they tried to shut him out of the business.

Dean Davenport formed a water drilling company with James Allen and Mark Wynne in 1999. The company's success drove the other two partners to try to push Davenport out, explained Tom Hall, who represented the plaintiff.

Using a novel theory of conversion — that the other two partners exercised dominion and control over Davenport's share of the company to his detriment — Hall asked jurors for between $70 and $100 million, or one-third of the value of company.

Type of case: Conversion, breach of fiduciary duty

Status: One defendant has settled; the other filed an appeal in December.

'Tate v. Discover Property & Casualty Co.,' Texas, $70 million

A Texas jury unanimously handed down a $70 million verdict against an insurance company and its claims adjuster, finding that they recklessly failed to timely pay workers' compensation benefits to a man who was severely injured in a fall on the job.

Charles Tate, a 52-year-old maintenance supervisor at an apartment complex, was severely injured after falling while using a chain saw on a ladder 30 feet in the air. He suffered injuries to his neck, shoulder and leg.

Tate applied for benefits on a quarterly basis, and each time the request was denied by the insurance company after the claims adjuster disputed Tate's eligibility. He was eventually paid the benefits after months of delays for each quarter. In the meantime, Tate suffered economic hardship and mental anguish.

Type of case: Unfair and deceptive trade practices

Status: No change.

'Lymon v. Bohn,' Florida, $65 million

A Florida jury awarded $65 million to a 21-year-old woman whose car was broadsided by a truck in 2007, leaving her with brain damage so severe she can no longer speak or care for herself.

The six-person jury hearing the case found that the trucking company and the driver bore 100 percent of the responsibility for the crash under the state's comparative negligence law.

The plaintiff's attorneys argued that the driver failed to take a mandated 10-hour rest period before operating the truck, and that his view of traffic was obstructed by another tractor trailer.

Type of case: Negligence

Status: On appeal.

'Hugh v. Ofodile,' New York, $60 million

A New York City jury awarded $60 million to a woman left deformed by a botched thigh lift.

Alison Hugh, 44, claimed the surgery left her with a deformed vagina and frequent urinary tract infections.

According to her attorney, Andy Alonso of Parker Waichman Alonso LLP in Great Neck, N.Y., the defendant in the case, Dr. Ferdinand Ofodile, did not warn Hugh of the scarring or stretching to the vaginal area that is a common risk of the procedure.

Alonso said he defused the defenses by pointing to Hugh's chart from the surgery consult. He was able to show jurors that there was no mention of the risk of labial pulling anywhere in the document — in fact, "the words 'labia' or 'vagina' never appear anywhere, in the entire chart," he said.

Type of case: Medical malpractice

Status: Post-trial motions still pending.

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