Judgments

2017 MILLION DOLLAR VERDICTS & SETTLEMENTS

$30 Million

Shareholder oppression trial nets buyout remedy

Plaintiffs sued for shareholder oppression, claiming dividend starvation, fraud, and withholding of information.

After two years of discovery and motion practice, the parties filed cross-motions for summary disposition. The court entered summary disposition in plaintiffs' favor on liability, finding shareholder oppression.

After a trial, the court ordered a buyout remedy pursuant to MCL 450.1489. With interest, the remedy reaches $30 million. This excludes attorney fees, which the court also awarded.

Gerard V. Mantese, counsel for plaintiff, provided case information.

MANTESE

WILLIAMSON

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Type of action: Shareholder oppression

Injuries alleged: Interference with shareholding interest

Name of case: Confidential

Date: Aug. 31, 2017

Judgment amount: $30 million, including interest awarded after trial

Most helpful expert: Thomas Frazee, CFA (Court held that no discounts were applicable due to oppression).

Attorneys for plaintiff: Gerard V. Mantese, Ian M. Williamson, Douglas L. Toering, Fatima M. Bolyea

Settlements

2017 MILLION DOLLAR VERDICTS & SETTLEMENTS

40 **$1.25 Million**

Control group forced plaintiff out as officer

Plaintiff was a shareholder and executive of a successful services company. He sued the control group for usurping his shareholder authority and driving the company into red ink. Plaintiff alleged that the control group:

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- Forced out plaintiff as an officer;
- Made critical company decisions without plaintiff's approval;
- Locked plaintiff out of corporate decision making; and,
- Denied plaintiff access to the books and records.

The control group counter-sued for fraud and mismanagement. After extensive motion practice spanning over a year, the defendants agreed to pay plaintiff $1,250,000 to settle all claims.

Jordan B. Segal, counsel for plaintiff, provided case information.

Type of action: Shareholder oppression, breach of fiduciary duty, breach of contract

Name of case: Confidential

Court/Case no./Date: Confidential

Name of judge: Confidential

Settlement amount: $1,250,000

Attorneys for plaintiff: Gerard V. Mantese, Douglas L. Toering, Jordan B. Segal

Class Actions

2017 MILLION DOLLAR VERDICTS & SETTLEMENTS

2 **$87.8 Million**

Auto dealerships secure settlements in price-fixing litigation

In the largest multi-district price-fixing case in history, U.S. District Court Judge Marianne O. Battani approved various settlements reached between representatives of a class of automobile dealership plaintiffs and automotive parts manufacturers alleged to have engaged in price-fixing and bid-rigging on numerous automotive parts, plaintiff's counsel reported. The settlements approved in 2017 total $87.8 million and cover 25 different parts and 15 different defendants, including the Bosch and Bridgestone defendant groups.

BLUM

The settlements are part of the ongoing *In re Automotive Parts Antitrust Litigation*. The multi-district litigation currently involves claims related to alleged price-fixing and bid-rigging on over 41 different parts and dozens of automotive parts manufacturers have been named as defendants. The U.S. Department of Justice has called the related criminal antitrust prosecution the largest in U.S. history.

Alexander E. Blum, counsel for plaintiff, provided case information.

Type of action: Violations of Section 1 of the Sherman Act and several state antitrust and consumer protection statutes

Name of case: In re Automotive Parts Antitrust Litigation

Court/Case no./Date: U.S. District Court, Eastern District of Michigan/12-md-02311

Name of judge: Hon. Marianne O. Battani

Settlement amount: $266 million; $87.8 million in 2017

Attorneys for plaintiff: Gerard V. Mantese, Alexander E. Blum, Jonathan Cuneo, Victoria Romanenko, Don Barrett, Shawn Raiter

Class Actions

2017 MILLION DOLLAR VERDICTS & SETTLEMENTS

8 **$1.3 Million**

Class action judgment requires forgiveness of medical debt with estimated $38M face value

Plaintiffs, on behalf of more than 600,000 Michigan residents burdened by medical debt, sued Accretive Health, Inc., one of the nation's largest collectors of medical debt, claiming that Accretive engaged in unfair and deceptive practices in violation of the federal and state laws regulating debt collectors — the Fair Debt Collection Practices Act and the Michigan Occupational Code.

HONIGMAN

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After lengthy negotiations, the parties agreed to a $1.3 million class action award, which was approved by Eastern District of Michigan Judge Victoria Roberts. Settlement proceeds, after fees and costs, will be paid to RIP Medical Debt, a charity that purchases and extinguishes consumer medical debt, often for pennies on the dollar. RIP Medical Debt will use the proceeds to purchase and forgive the medical debts of Michigan families subjected to Accretive's collection practices. RIP Medical Debt estimates that the award will allow it to purchase and forgive approximately $38 million in medical debt owed by class members.

This constitutes the largest instance of purchasing medical debt solely for the purpose of forgiving and extinguishing it in U.S. history, topping late-night comedian John Oliver's 2017 televised pledge to purchase and forgive American families' medical debt, which was previously the largest known instance of an altruistic purchase of medical debt solely for the purpose of forgiveness, according to plaintiff's counsel. This is the first time that class action plaintiffs have sought such a remedy and the first time that a court has considered and approved a class action judgment employing this remedy, which greatly magnifies the compensatory benefits of a class action recovery, plaintiff's counsel stated.

The court's judgment also orders Accretive Health to change its debt collection practices and form letters, eliminating statements and practices that plaintiffs alleged were unfair, false and misleading.

The court approved the parties' innovative settlement based upon an exhaustively researched 86-page motion seeking preliminary approval of the class action settlement followed by an additional exhaustively researched 91-page motion seeking final approval. Dave Honigman, lead counsel, stated that the turning point in the litigation was defeating the debt collector's motion to dismiss. The debt collector claimed that it was not a "debt collector" under federal law or a "collection agency" under state law and, therefore, it did not have to comply with the federal and state laws regulating debt collectors. Both sides filed three lengthy briefs each in support of and in opposition to defendant's motion to dismiss. The court held that plaintiff had successfully stated claims for violations of both federal and state law.

Honigman stated: "Substantial benefits were conferred on the class and society by the parties' Settlement Agreement. The creation of a $1.3 million settlement fund, the injunctive relief mandated by the parties' Settlement Agreement (i.e., the required changes to Accretive's communications to patients and their families), the deterrent effect of the parties' Settlement Agreement on Accretive and on other debt collectors, and the *cy pres* award to RIP Medical Debt, are extraordinary results for the class and for society at large."

Honigman continued: "Simply distributing the $1.3 million award pro rata to more than 600,000 Michigan families would have resulted in the receipt of less than $1 by individual class members, after taking into account fees and costs, including the substantial cost of distributing the award to more than 600,000 people. Although the deterrent objectives of class awards are achieved as a result of the injunctive relief and the amount of the aggregate award without regard to the per capita distribution to each class member, class-action awards are sometimes criticized when they result in a small per capita distribution to class members, even when the aggregate amount of the award is substantial. The deterrent objectives of class actions are achieved whenever (1) injunctive relief ending an objectionable practice is awarded, or (2) a class action judgment is substantial *in the aggregate*, because any award that is substantial *in the aggregate* forces a wrongdoer to disgorge the profits of its wrongful conduct and internalize costs that it would otherwise wrongfully avoid notwithstanding the small amount of the award on a *per capita* basis. Any remedy that strips the wrongdoer of the fruits of his bad acts and penalizes wrongdoers to the point that their 'crime doesn't pay' is a desirable result. Of further benefit, the novel remedy we employed here — and which I hope others will look to employ in the future — elevates the compensation that *individual* class members receive from a merely nominal amount to a meaningful or even life-changing amount, which both benefits the individual victims of the wrongdoing and, just as importantly, enhances the stature and the dignity of the class remedy in lawsuits by consumers of health care and other products and services."

Dave Honigman, Krista Hosmer and Jordan Segal, counsel for plaintiffs, provided case information.

Type of action: Violations of Fair Debt Collection Practices Act and Michigan Occupational Code

Name of case: Anger, et. al. v. Accretive Health, Inc.

Court/Case no./Date: U.S. District Court for the Eastern District of Michigan/14-12864/Oct. 11, 2017

Name of judge: Hon. Victoria A. Roberts

Judgment amount: $1.3 million to purchase estimated $38 million of medical debt and pay fees and costs, and injunctive relief forbidding allegedly wrongful practices

Attorneys for plaintiff: Dave Honigman, Krista Hosmer, and Jordan Segal; James Warr

Attorneys for defendant: Kirkland & Ellis