

SETTLEMENTS

2012 MILLION-DOLLAR VERDICTS & SETTLEMENTS

#1

Shareholders claim oppression, breach of fiduciary duty

Owners of 25% of business say they received less than 1% profits

\$13 MILLION

Plaintiff shareholders sought financial damages from defendants — Michigan corporations, LLCs and shareholders — on claims of shareholder oppression and breach of fiduciary duty.

Plaintiffs owned 25 percent of a manufacturing company. After years of receiving less than 1 percent of the profits, they brought suit, alleging that the defendant shareholders, who owned 75 percent of the business, had acted as a control unit and had diverted corporate opportunities to expand the business. They also alleged that the defendants had paid themselves excessive compensation.

Plaintiffs' counsel cited thorough depositions; meticulous review of thousands of financial documents; a strong opening statement with embedded video clips of key admissions; and rigorous trial preparation, including client direct examinations, as keys to winning.

After plaintiffs' key witness testified on the fifth day of the jury trial, the matter settled for \$13 million.



MANTESE



ROSSMAN



WILLIAMSON

Types of actions: Shareholder oppression, breach of fiduciary duty, usurpation of corporate opportunities

Types of injuries: Loss of stock value, financial damages

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Nov. 29, 2012

Name of judge: Withheld

Settlement amount: \$13 million

Attorneys for plaintiff: Gerard Mantese, Mark Rossman, Ian Williamson

Attorney(s) for defendant: Withheld

Shareholders assert a squeeze-out attempt

Breach of fiduciary duty, lifetime employment argued by ex-workers

\$4.59 MILLION

Plaintiffs Kurt Schwannecke (as an individual and also in his capacity as trustee for the Robert Schwannecke Trust), Gayl Winkowski, Todd Schwannecke and Elizabeth Schwannecke sued defendants William Schwannecke, William Schwannecke Trust, Self Serve Lumber Co. and S&S Wholesale LC on claims of shareholder and member oppression, breach of fiduciary duty, breach of contract and wrongful discharge



MANTESE

The plaintiffs had worked for Self Serve Lumber for several decades, and they collectively owned a minority, non-controlling interest in the company. Over the course of several months, William Schwannecke, the controlling shareholder, terminated each of the plaintiffs from their long-held positions of employment, eliminated all of their benefits, removed them from the board of directors, and was attempting to force the sale of the plaintiffs' shares at a subpar price.



ROSSMAN

Alleging that defendant Schwannecke's course of conduct constituted a shareholder squeeze-out, the plaintiffs filed claims for violations of the shareholder and member oppression statutes, breach of fiduciary duty, and breach of lifetime employment contracts.

The principal remedies sought by plaintiffs were a court-ordered buyout of their shares and damages, or, alternatively, the appointment of a receiver and the dissolution and liquidation of the business.

After early and intense discovery, and forensic investigation and analysis of the businesses' finances, the parties engaged in a two-day facilitation process that culminated in a \$4.59 million settlement in favor of the plaintiffs.

Types of actions: Shareholder and member oppression, breach of fiduciary duty, breach of contract, wrongful discharge

Type of injuries: Value of shareholding and member interests

Name of case: *Schwannecke, et al. v. Schwannecke, et al.*

Court/Case no./Date: Saginaw County Circuit Court; 2012-15139-CK-2; July 19, 2012

Tried before: Facilitation

Name of judge: Robert Kaczmarek

Settlement amount: \$4.59 million

Most helpful expert: Jesse Ultz, valuation and financial opinions, Southfield

Insurance carrier(s): Withheld

Attorneys for plaintiff: Gerard Mantese, Mark Rossman

Attorney(s) for defendant: Withheld

Ex-shareholder claims fiduciary duty, breach of contract, oppression

Plaintiff: Book-value assessment should not have been utilized

\$1.2 MILLION

In a confidential lawsuit, plaintiff claimed shareholder/member oppression, breach of contract, and breach of fiduciary duty after being terminated and offered only a nominal buyout.

He sought a buyout of his ownership interests at fair value and damages for lost wages and profits.

The plaintiff was an executive and shareholder owning approximately 20 percent of a corporation; he also was a member/partner in several other related companies. He alleged that he was oppressed by the majority shareholder; was denied a fair share of corporate profits; was excluded from management of the companies; and had his employment wrongfully terminated in violation of a promise of lifetime employment.



MANTESE



SAXE

Among defendants' arguments, the plaintiff had no guaranteed right to continued employment, and that his ownership interests in the companies were to be bought out strictly pursuant to an agreed-upon formula — which, plaintiff contended, yielded a very minimal buyout amount.

The defendants added that the plaintiff's claims were barred or trumped by prior agreements between the parties — including the parties' stock-purchase agreement — and belonged in arbitration.

Plaintiff's counsel made vigorous use of statutory tools to obtain documents that had previously been withheld from the plaintiff; developed legal avenues for litigating around the prior agreements signed by the parties; and worked closely with a valuation expert to develop an income-based assessment of the businesses, rather than a book-value assessment.

After engaging in extensive discovery, briefing and settlement discussions, the case settled for \$1.2 million.

Types of actions: Shareholder oppression, breach of fiduciary duty, breach of contract

Types of injuries: Shareholding and other ownership interests, lost wages, lost profits

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Sept. 20, 2012

Name of judge: Withheld

Settlement amount: \$1.2 million

Most helpful expert: David Croskey, business valuation and lost wages/profits, Rochester

Insurance carrier(s): Withheld

Attorneys for plaintiff: Gerard Mantese, Brian Saxe

Attorney(s) for defendant: Withheld

CLASS ACTIONS

2012 MILLION-DOLLAR VERDICTS & SETTLEMENTS

#3

Residents seek relief after city-planted trees damage their property

12-year lawsuit mired in appeals over whether class status holds

\$1.42 MILLION

Plaintiff Timothy Carlson, representing all other similarly situated people, sought damages from defendant city of Warren, alleging claims of trespass-nuisance, constitutional taking, and violation of due process after city-owned trees damaged residents' property.

In the 1950s and 1960s, the city planted fast-growing trees, including silver maples, on the portion of residents' properties between the street and sidewalk. Because of the trees' highly aggressive root system, homeowners sustained clogged and broken sewer pipes, damaged lawns, broken sidewalks, and sewer backups into their homes.

Many homeowners sought to mitigate their damages by having the nuisance trees removed, but the city's ordinance made it illegal to do so, effectively barring residents from engaging in self-help. A suit was filed in May 2000.



MANTESE



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The circuit court initially denied class certification to plaintiffs, finding there were too many individualized issues to warrant a class action. The ruling was reversed by the Court of Appeals, then reversed again by the Michigan Supreme Court.

When plaintiffs demonstrated that common issues of law and fact predominated, the circuit court in 2004 certified the case as a class action.

The city then appealed to the Supreme Court, which remanded the case to the Court of Appeals to determine whether the decision of *Pohutski v City of Allen Park*, 465 Mich 675 (2002) — which abolished the trespass-nuisance cause of action except in existing "cases," and was decided two years after this suit was filed — affected the circuit court's ruling.

The Court of Appeals upheld the class certification, and also found that the case would retain the benefit of the pre-*Pohutski* exception to governmental immunity for trespass-nuisance.

In 2010, the city filed motions seeking: summary disposition of plaintiffs' claims on seven different grounds; imposition of a mandatory pretrial proof-of-claim procedure; bifurcation of the trial into separate liability

and damages phases; and decertification of the class.

Plaintiffs prevailed on almost every legal point at issue in the summary disposition motions, and defeated the city's motions for a pretrial proof-of-claim requirement and bifurcation of trial.

After the city filed additional appeals, in early 2012, the Supreme Court denied leave to appeal in part, and remanded the case back to the Court of Appeals for consideration of a statute of limitations question involving the "continuing wrongs" doctrine.

Before the remanded questions and the pending claim of appeal could be heard, the case settled for \$1.42 million.

Types of actions: Class action for trespass-nuisance, constitutional taking, violation of due process

Type of injuries: Property damage

Name of case: *Carlson, et al. v. City of Warren*

Court/Case no./Date: Macomb County Circuit Court; 00-1823-CZ; Oct. 9, 2012

Names of judges: Matthew Switalski, James Biernat Sr.

Facilitator: Jon Muth

Settlement amount: \$1.42 million

Most helpful experts: Robert Cool, forestry, Lansing; Paul Bladdick, plumbing, White Lake Township

Attorneys for plaintiffs: Gerard Mantese, Stuart Fraser IV, Brian Saxe

Attorney for defendant: John Gillooly