

# 2015 Million Dollar Verdicts & Settlements

SECTION B | January 25, 2016



## ■ Verdicts

A Wayne jury determined a hospital was negligent for performing the wrong surgery on a patient and awarded \$21 million; product liability, no-fault, breach of contract and medical malpractice also placed high among top trials.

## ■ Judgments

A man who lost his ear, arm and leg in a pit bull attack was awarded \$100 million, plus a bank must pay \$72 million to victims of a Ponzi-style loan scheme.

## ■ Arbitrations

Compuware's founder was awarded \$16.5 million for his claims of wrongful termination and canceled stock options, while a business owner claiming oppression received \$3.1 million.

## ■ Settlements

A \$15.2 million deal settled breach of fiduciary duty claims; other settlements include auto negligence, wrongful death and medical malpractice.

## ■ Class actions

Two claims of auto parts price-fixing schemes result in settlements of \$116 million and \$58 million, while victims of a sewer backup secured \$7 million in addition to infrastructure improvements.

This section includes verdicts and settlements of \$1 million or more obtained in a Michigan court in 2015 that were reported to Michigan Lawyers Weekly and verified on or before Dec. 29, 2015.

We would like to thank the attorneys who submitted their reports to MiLW throughout 2015. While many of these reports were published in the "Verdicts & Settlements" section of the newspaper, others appear in this section for the first time.

MiLW seeks to be as inclusive as possible in reporting verdicts and settlements from across the state. This annual compilation includes case results reported to us and verified by our editors. Please help us to be as complete as possible and send your case results for our weekly Verdicts & Settlements feature. They may be submitted online at [milawyersweekly.com/submit-verdicts](http://milawyersweekly.com/submit-verdicts).

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# Arbitrations

2015 MILLION DOLLAR VERDICTS & SETTLEMENTS



1

\$16.5 Million

## Compuware founder, ex-CEO claimed wrongful termination

On May 11, 2015, Wayne County Circuit Court Judge Daniel P. Ryan confirmed an arbitration award by Gene J. Esshaki ordering defendant Compuware Corp. to pay plaintiff Peter Karmanos Jr. \$16.5 million.

Karmanos, co-founder and longtime CEO and chairman of Compuware, retired in March 2013 and became a consultant to the company. Compuware terminated Karmanos in September 2013 and cancelled millions of dollars in vested stock options, purportedly because Karmanos made critical comments about Compuware's management.

Karmanos sued for breach of contract, conversion and unjust enrichment. Compuware vigorously defended the case, contending that it had the right to terminate Karmanos and cancel his vested stock options.

Following a two-week hearing, Esshaki awarded Karmanos \$16.5 million. Compuware moved to vacate the award, but Ryan denied the motion, confirmed the award and entered a \$16.5 million judgment against Compuware. Ryan ruled that the parties had agreed in writing that the arbitrator would issue an award without findings of fact and law, and that "in Michigan, it is well-settled law that arbitration is intended as a substitute, not a warmup for litigation."

Kevin F. O'Shea, co-counsel for plaintiff, provided case information.

See related story, "Karmanos' \$16.5 million arbitration award stands," MILW, May 25, 2015.

**Type of action:** Breach of contract/wrongful termination, conversion, unjust enrichment

**Name of case:** Karmanos v. Compuware Corp.

**Court/Case no./Date:** Wayne County Circuit Court; 2013-014776-CK; May 11, 2015

**Tried before:** Arbitration, Judge

**Name of judge:** Hon. Daniel P. Ryan

**Name of arbitrator:** Gene J. Esshaki

**Arbitration award:** \$16.5 million

**Attorneys for plaintiff:** E. Powell Miller, Kevin F. O'Shea, Devon P. Allard, Mariell R. McClatcher

**Attorneys for defendant:** Samuel C. Damren, Andrew J. Kolozsvary

management to the defendant, the 40 percent member.

Plaintiff contended that defendant manager began to take a series of oppressive actions designed to force plaintiff into selling his ownership interest at a diminished price.

Defendant barred plaintiff from entering the company's premises; locked plaintiff out of the company's computer server; denied plaintiff financial information; denied plaintiff involvement in decision-making at the company; and prevented plaintiff from communicating with the company's employees and clients.

After an eight-day arbitration hearing, including the examination of various witnesses and experts, the arbitrator determined that defendant's actions constituted "willfully unfair and oppressive" conduct, and that defendant was therefore liable for member oppression under MCL 450.4515.

After further briefing and argument, the arbitrator granted plaintiff the remedy he



EISENSTEIN



HANSMA

requested, ordering defendant to sell his entire membership interest to plaintiff, effectively returning sole control of the company to plaintiff.

In addition, as damages, the arbitrator ordered defendant to reimburse the company for \$425,000 in attorneys' fees he caused the company to pay on his behalf.

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

**Type of action:** Member oppression under MCL 450.4515, breach of fiduciary duty

**Type of injuries:** Loss of member interest value, improper use of company funds

**Name of case:** Confidential

**Court/Case no./Date:** Confidential; confidential; Jan. 20, 2015

**Tried before:** Arbitration

**Name of judge:** Withheld

**Name of arbitrator:** Withheld

**Arbitration award:** Acquisition of member interest so that plaintiff acquired 100 percent of the company (valued by the expert in excess of \$2.7 million) and damages of \$425,000, totaling \$3,125,000 in benefits to plaintiff

**Most helpful expert:** Thomas A. Frazee, CPA, Sterling Heights

**Attorneys for plaintiff:** Gerard V. Mantese, David Hansma, Kathryn R. Eisenstein

**Attorney(s) for defendant:** Withheld

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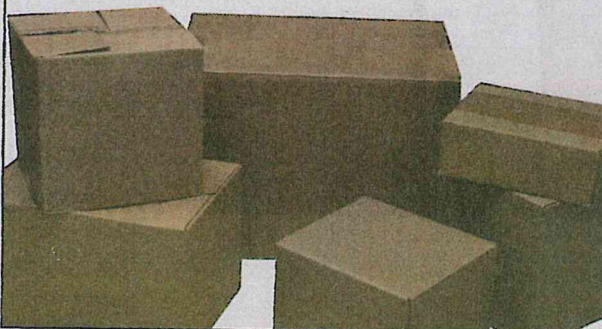
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2

\$3,125,000

## Business owner said he was oppressed by 40% member

Plaintiff, who owned 60 percent of a thriving business, turned over day-to-day



# Settlements

## 2015 MILLION DOLLAR VERDICTS & SETTLEMENTS



**1** \$15.2 Million

### Shareholder, member oppression case nets recovery

Plaintiff was a shareholder or member of several related companies. Plaintiff brought actions against the control group alleging shareholder and member oppression, breach of fiduciary duty and other claims.

Pursuant to extensive negotiations, mediations, discovery, motion practice and a negotiated buy-out of plaintiff's ownership interests in the companies, plaintiff received proceeds of \$15.2 million.

Brian M. Saxe, co-counsel for plaintiff, provided case information.

**Type of action:** Shareholder and member oppression, breach of fiduciary duty

**Type of injuries:** Loss of stock value, interference with ownership interests

**Name of case:** Confidential

**Court/Case no./Date:** Confidential; confidential; April 27, 2015

**Name of judge:** Withheld

**Settlement amount:** \$15.2 million

**Attorneys for plaintiff:** Gerard V. Mantese, Brian M. Saxe

**Attorney(s) for defendant:** Withheld



MANTESE



SAXE

Jack M. Beam

**Attorney(s) for defendant:** Withheld

**3** \$11.9 Million

### Truck driver went twice the speed limit, hit, killed three

In a truck driver negligence claim filed in Wayne County Circuit Court, a semi-truck driver was traveling 60 miles an hour in a 30 mph traffic zone and ignored a red light. He then tried to swerve to avoid oncoming traffic. His reckless driving caused his trailer to turn over onto the car driven by plaintiffs' decedent.

The semi's trailer, which weighed more than 39,000 pounds, trapped, crushed and suffocated the driver and her two passengers. A surveillance video from a nearby gas station caught the entire accident on camera. It shows the driver running the red light, and the semi's trailer flipping over on top of the car. The passengers died a slow, agonizing death due to asphyxiation.

The case settled for \$11.9 million shortly after the depositions of plaintiffs' experts were taken.

Geoffrey N. Fieger, counsel for plaintiffs, provided case information.

**Type of action:** Truck driver negligence

**Type of injuries:** Death of three people (mother and two adult children)

**Name of case:** Confidential

**Court/Case no./Date:** Wayne County Circuit Court; confidential; Sept. 2, 2015

**Name of judge:** Hon. John A. Murphy

**Settlement amount:** \$11.9 million

**Case evaluation:** \$13.5 million

**Insurance carrier(s):** Withheld

**Attorney for plaintiff:** Geoffrey N. Fieger

**Attorney(s) for defendant:** Withheld

**4** \$9.5 Million

### 19-year-old died from injuries in house explosion

This was a wrongful death case where the 19-year-old plaintiff was severely burned and injured in a house explosion. After fighting for his life for several months, he passed away.

The matter settled for \$9.5 million.

Geoffrey N. Fieger, co-counsel for plaintiff, provided case information.

**Type of action:** Wrongful death

**Name of case:** Confidential

**Court/Case no./Date:** Confidential; confidential; Oct. 11, 2015

**Name of judge:** Withheld

**Settlement amount:** \$9.5 million

**Insurance carrier(s):** Withheld

**Attorneys for plaintiff:** Geoffrey N. Fieger, James J. Harrington IV

**Attorney(s) for defendant:** Withheld

**5** \$8 Million

### Man, wife severely injured in semi-truck collision

This case involved a semi-truck/minivan collision that resulted in a severe traumatic brain injury to a 76-year-old retired steel worker and numerous significant, but less serious, injuries to his wife of 56 years.

The parties agreed to participate in a voluntary mediation with a well-respected, nationally known mediator. After two mediation sessions, the second of which lasted approximately sixteen hours, the parties were successfully able to settle the claims.

At mediation, the defense did not contest liability. The focus of the mediation sessions involved the nature and extent of plaintiffs' injuries, causation, and damages. Most significant were issues relating to prognosis and life expectancy. Plaintiffs' counsel said that the keys to the resolution of this claim were meticulous preparation and documentation regarding damages, including a professionally produced video that included a documentary of plaintiffs' lives prior to the collision and day-in-the-life footage taken after the collision.

Bryan J. Waldman, co-counsel for plaintiff, provided case information.

**Type of action:** Semi truck/automobile collision

**Type of injuries:** Traumatic brain injury, multiple facial fractures, (4 vertebral fracture, rib fracture (plaintiff male); bilateral thigh hematomas, tears of medial and lateral meniscus of left knee requiring arthroscopic surgery, three fractured ribs, avulsion fracture of right ankle, closed-head injury, multiple fractured teeth and broken dental bridge, nerve damage in left thigh, traumatic lipoma of left thigh, depression, loss of consortium (plaintiff female)

**Name of case:** Confidential

**Court/Case no./Date:** Confidential; confidential; April 27, 2015

**Name of judge:** Withheld

**Settlement amount:** \$8 million

**Most helpful expert:** Dr. Robert K. Kreitsch, physical medicine and rehabilitation, Grand Rapids

**Insurance carrier(s):** Withheld

**Attorneys for plaintiff:** Bryan J. Waldman, Mark C. Harper

**Attorney(s) for defendant:** Withheld



WALDMAN

**6** \$7,675,000

### State trooper accused of gross negligence in fatal Flint pursuit

On July 3, 2014 at approximately 4 p.m., Precious Cochran, driver and owner of a 2006 Chevy HHR, was traveling east on Pierson Road in Flint, about two blocks from front-seat passenger Jacqueline Nichols's home. The back-seat passenger was Robbie Cochran, Precious Cochran's daughter.

Meanwhile, defendant Timothy Fagin, a state trooper, was driving his patrol car with his father, Timothy Fagin Sr., as the passenger on a "ride along." While westbound on East Stewart Avenue, Fagin spotted a driver not wearing his seatbelt and activated his lights. The driver fled, making a right turn to head northbound on North Street (a one-way street), and Fagin began his pursuit. During the pursuit, Fagin reached 54 mph in the 30 mph zone.

As Cochran neared the intersection of East Pierson and North Street, she saw the traffic signal was a flashing yellow for Pierson traffic and a flashing red for North street traffic. The driver fleeing from Fagin sped through the red light. Cochran slowed her vehicle when she saw the vehicle going through the intersection, then continued to proceed into the intersection.

After traveling past several stop signs without slowing and without his sirens activated, Fagin entered the intersection and hit Cochran's HHR. The force of the impact caused the HHR to be tossed onto its side through the intersection and onto private property.

Following the accident, Nichols and Robbie Cochran were transported via ambulance to Hurley Medical Center. Upon arrival, Nichols was receiving CPR via compression device. After several attempts were made to revive her, she was pronounced from multiple blunt force injuries.

Cochran arrived unresponsive and on a ventilator with a bag valve mask. Diagnostic testing revealed a neck injury — a displaced type 3 fracture of the C2 odontoid process, with the fracture line passing through the base of the odontoid process involving the left lateral arch and passing through the left neural foramina.

Cochran also sustained two rib fractures, a right upper lung contusion, a right pneumothorax and a grade-one liver laceration. As a result of a neck fracture, four pins were placed around her head along with the halo vest to hold it



COLLIS

### Birth injury by trauma, hypoxia-ischemia settles

Plaintiffs filed suit on claims of birth injury caused by a combination of trauma and hypoxia-ischemia.

The matter settled for \$12 million

Geoffrey N. Fieger, co-counsel for plaintiff, provided case information.

**Type of action:** Medical malpractice, birth trauma

**Type of injuries:** Brain injury

**Name of case:** Confidential

**Court/Case no./Date:** Confidential; confidential; June 26, 2015

**Name of judge:** Withheld

**Settlement amount:** \$12 million

**Insurance carrier(s):** Withheld

**Attorneys for plaintiff:** Geoffrey N. Fieger,

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# Settlements

## 2015 MILLION DOLLAR VERDICTS & SETTLEMENTS



cellular phone and when he looked back up, he had crossed the center line, and struck the vehicle containing Doe. Crash data retrieval information revealed that Doe was travelling 45 mph and the defendant was travelling 65 mph in a 55 mph zone.

Plaintiff's decedent was born in 1991 in Michigan. She had graduated from high school in 2010, where she enjoyed sports and volunteering and was a cheerleader. She had enrolled at college and was set to begin its nursing program in September 2014. She eventually wanted to become a physician's assistant. The plaintiff left behind her parents, stepparents, her paternal and maternal grandparents, two sisters and many friends.

A lawsuit was filed in the Washtenaw County Circuit Court, which included counts of negligence and gross negligence. Discovery revealed that the defendant had a base liability policy of \$250,000 and a \$1 million umbrella policy. Defendant's attorney allowed discovery regarding defendant's assets and income so that defendant's collectability could be ascertained. Plaintiff's counsel hired their own private investigator to investigate defendant's assets.

Defendant pleaded guilty to operating while intoxicated causing death, so defendant was unable to contest the negligence count. There was no comparative negligence, other than Doe did not have her seatbelt on.

Investigation revealed that there was no way to establish that the golf course employees had provided alcohol directly to defendant at any time. Instead, the alcohol would have been purchased by the member of the country club who was golfing with the defendant and others.

Defendant's insurance agency was terminated because of the incident. He was sentenced to two to 15 years in prison. The case was settled with carrier State Farm paying its \$1.25 million limits, defendant Roe paying \$90,000 personally and the golf club paying \$5,000.

Michael J. Garris, co-counsel for plaintiff, provided case information.

**Type of action:** Third-party wrongful death

**Type of injuries:** Death

**Name of case:** Doe v. Roe

**Court/Case no./Date:** Washtenaw County Circuit Court; confidential; Feb. 11, 2015

**Tried before (jury, judge, facilitation, mediation or arbitration):**

**Name of judge:** Hon. David S. Swartz

**Settlement amount:** \$1,345,000

**Insurance carrier:** State Farm

**Attorneys for plaintiff:** Michael J. Garris, Laurence H. Margolis

**Attorney(s) for defendant:** Withheld



GARRIS



MARGOLIS

**40** \$1.32 Million

### Ex-insurance agency co-owner sought contingent commissions

Plaintiff owned a significant stake in a successful insurance agency, which was sold to a multinational conglomerate. Plaintiff argued that the transactional documents required payment to the former owners of certain contingent commissions arising out of programs established prior to the sale. The new parent company disputed the plaintiff's interpretation of the transactional documents.

After plaintiff's attorneys deposed key executives from the parent company and established a pattern of evidence supporting the plaintiff's interpretation of the relevant contract language, the defendants settled prior to a final hearing. Defendants agreed to make payments to plaintiff totaling slightly in excess of \$1.3 million.

Ian M. Williamson, co-counsel for plaintiff, provided case information.

**Type of action:** Breach of contract, breach of fiduciary duty, tortious interference

**Type of injuries:** Defendant's refusal to pursue and pay contractually agreed-upon post-sale commission payments

**Name of case:** Confidential

**Court/Case no./Date:** Confidential; confidential; Sept. 1, 2015

**Name of judge:** Withheld

**Settlement amount:** Initial payment of \$400,000 plus percentage of arbitration award, totaling \$1.32 million

**Most helpful experts:** Michael S. Hale, risk management, Northville; Justin L. Cheroff, valuation and consulting, Southfield

**Attorneys for plaintiff:** Gerard V. Mantese, Ian M. Williamson

**Attorney(s) for defendant:** Withheld



WILLIAMSON

tiff alleged was retaliation. WADL disputed plaintiff's unemployment until the COBRA window (to elect replacement insurance) closed.

Vella was unable to afford insurance and suffered severe complications, ultimately dying mid-litigation. An expert testified that prompt treatment of the bladder cancer that killed Vella has a 90 percent cure rate.

The case was pleaded as an ERIISA and ADA discrimination and retaliation case, with pendent claims under the Persons With Disabilities Civil Rights Act and various state common law theories including fraud, silent misrepresentation and unjust enrichment.

After Vella's death, a lengthy dispute evolved over substitution of his sister as successor plaintiff and addition of Vella's daughter on a theory of loss of consortium.

Days before a federal trial was scheduled to commence, the case settled for \$1.3 million.

Sarah S. Prescott, counsel for plaintiff, provided case information.

**See related story, "Life in the balance," MILW, Jan. 11, 2016.**

**Type of action:** Employment, disability discrimination

**Type of injuries:** Lost wages, lost benefits, pain and suffering, death

**Name of case:** Vella v. Adell Broadcasting Corp.

**Court/Case no./Date:** U.S. District Court, Eastern District of Michigan; 13-CV-10061; Oct. 8, 2015

**Tried before:** Judge

**Name of judge:** Hon. Judith E. Levy

**Settlement amount:** \$1.3 million

**Most helpful expert:** Dr. Dudley S. Danoff, urology, Los Angeles

**Attorney for plaintiff:** Sarah S. Prescott

**Attorneys for defendant:** William J. McHenry, John C. Cashen, Paul J. Christensen, Thomas Van Dusen, Michael A. Schwartz



PRESCOTT

was seriously injured. The dispute was with regard to the future economic impact of plaintiff's injuries. From the perspective of plaintiff's counsel, obtaining medical evidence regarding plaintiff's injuries and future physical limitations and then applying the medical evidence to a future wage loss analysis, was the key to the resolution of the case.

Bryan J. Waldman, co-counsel for plaintiff, provided case information.

**Type of action:** Automobile/motorcycle collision

**Type of injuries:** Numerous orthopedic injuries including fractures of the right humerus, ulna and radius; fractures of the left radius, ulna, and 2nd metacarpal; fracture of the right hip and right pubic ramus; fracture of the S1 vertebra

**Name of case:** Johnson v. Schapenayer

**Court/Case no./Date:** Eaton County Circuit Court; 14-30-46; Jan. 21, 2015

**Name of judge:** Hon. Janice K. Cunninghamham

**Name of mediator:** Paula J. Manderfield

**Settlement amount:** \$1.26 million

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### 2016 MILLION DOLLAR VERDICTS & SETTLEMENTS



### ADR SURVEY



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**41** \$1.3 Million

### Sales exec fired after asking about dropped benefits

Plaintiff's decedent Robert Vella worked for WADL Channel 39 as an account executive in sales. He received health insurance, which was renewed during open enrollment days before suffering a heart attack. He later learned he had bladder cancer as well.

Plaintiff alleged that WADL owner Kevin Adell ordered Vella to be recategorized as an exempt independent contractor without benefits so that Vella's insurance was cancelled while he was in the hospital. When Vella discovered this, he made a written complaint and was terminated minutes later, which plain-

**42** \$1.26 Million

### Motorcyclist suffered significant orthopedic injuries; case settled

This case involved a clear liability claim in which a minor failed to see plaintiff on his motorcycle and made a left turn directly into his path. The crash caused significant orthopedic injuries to plaintiff, who was a skilled tradesman, in outstanding physical shape and highly motivated to return to work.

Defense admitted liability and agreed plaintiff



SINAS





# Settlements

## 2015 MILLION DOLLAR VERDICTS & SETTLEMENTS



### Tried before: Arbitration

**Name of arbitrator:** Withheld

**Settlement amount:** \$1.25 million

**Attorneys for plaintiff:** Randall J. Gillary, Kevin P. Albous

**Attorney(s) for defendant:** Withheld

45

\$1.2 Million

### Attendant care, home modifications at issue

This was a highly complex case involving home modifications from a 2007 automobile accident. Plaintiff was a 12-year-old pedestrian who ran across Interstate 75 and was struck by a car. He was 18½ years old when counsel was retained.

The \$1.2 million settlement included \$250,000 for the outright purchase of a new home without a reversionary interest, as well as an agreement as to attendant care and agency care. The \$100,000 policy limits for the driver were tendered upon demand based on excess wage loss and a pure comparative-fault analysis. The settlement also included voluntarily paid attorney fees.

ATNIP

Litigation was intense and involved multiple full-day facilitations with the Michigan Catastrophic Claims Association, which, over the course of several months, was ordered by the court to be present.

Heather J. Atnip, counsel for plaintiff, provided case information.

See related story, "\$1.2M settlement: New home for catastrophically injured child," *MILW*, Aug. 3, 2015.

**Type of action:** First-party no-fault benefits — home modification

**Type of injuries:** Severe brain injury

**Name of case:** Maxwell v. American Casualty Co.

**Court/Case no./Date:** Wayne County Circuit Court; 13-011513-NP; March 26, 2015

**Name of judge:** Hon. Kathleen Macdonald

**Name of mediator:** Ronald Sangster

**Settlement amount:** \$1.2 million

**Case evaluation:** \$380,000

**Special damages:** Attorney fees voluntarily paid

**Insurance carrier:** American Casualty

**Attorney for plaintiff:** Heather J. Atnip

**Attorney(s) for defendant:** Withheld

45

\$1.2 Million

### Minority shareholders obtain settlement for breach, oppression

Plaintiffs filed suit for shareholder/member oppression and breach of fiduciary duty. They contended that defendants

froze plaintiffs out of the management of a family business — including prohibiting the plaintiffs from accessing the company's books and records.

Plaintiffs alleged, among other things, that they were oppressed by the majority shareholders, denied any share of corporate profits and excluded from the management of the company. The plaintiffs sought a buyout of their ownership interests at fair value.

The defendants denied that they were oppressing plaintiffs, instead claiming that the business lacked the assets to fund any kind of buyout of the plaintiffs' interest.

After extensive motion practice and then settlement discussions, the parties negotiated a confidential \$1.2 million settlement.

Alexander E. Blum, co-counsel for plaintiffs, provided case information.

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

**Type of injuries:** Shareholding and other ownership interests, lost profits

**Name of case:** Confidential

**Court/Case no./Date:** Confidential; confidential; Dec. 3, 2015

**Name of judge:** Withheld

**Settlement amount:** \$1.2 million

**Attorneys for plaintiff:** Gerard V. Mantese, Theresamarie Mantese, Alexander E. Blum

**Attorney(s) for defendant:** Withheld



BLUM

### Patient died after delayed intestinal leak diagnosis

On Feb. 27, 2009, plaintiff underwent an open total abdominal colectomy with ileorectal anastomosis by defendant doctors. On March 1, plaintiff demonstrated signs and symptoms of an anastomotic [intestinal] leak; she was tachycardic with decreased urine output.

On March 2, the rapid response team was called at 4:37 a.m. because of plaintiff's tachycardia (heart rate of 143) and low urine output; this was the first of three times the rapid response team would be called for plaintiff.

Plaintiff had the signs and symptoms of an anastomotic leak and systemic inflammation response syndrome (SIRS), including tachycardia, elevated respiratory rate, low white blood cell count, decreased urine output, abdominal pain and shortness of breath.

Defendant doctors testified that based on plaintiff's signs and symptoms on March 2, the two most serious and life threatening possibilities within the differential diagnosis included pulmonary embolism (PE) and an anastomotic leak.

At 11:32 a.m. defendant doctor ordered a chest CT to rule out PE. The chest CT ruled out PE, with the additional findings

of "large amount of free intraperitoneal air as well as abdominal ascites." Defendant doctors testified that free intraperitoneal air as well as abdominal ascites was a sign of an anastomotic leak.

Plaintiff continued to deteriorate. On March 2 defendant doctors failed to order any additional diagnostic studies to rule-in/rule-out an anastomotic leak; failed to diagnose the leak; and failed to perform surgery to stop the leak and SIRS.

On March 3, plaintiff's signs and symptoms of an anastomotic leak and sepsis continued. At 1:45 a.m., colon and rectal services noted: HR 124-150; RR 22-34; "will discuss with the team for evaluation for anastomotic leak in am."

At 11:39 a.m., defendant doctor ordered a gastrografin enema to rule-in/rule-out a leak; the study stated "Given review of the patient's CT scan from yesterday, which images the upper abdomen, the degree of free fluid, and free air appears more than expected, recommend a CT scan of the abdomen and pelvis for further evaluation and quantification of the degree of free air and free fluid. This may be better evaluated for subtle anastomotic leak ..."

On the evening of March 3, plaintiff was finally taken to the operative room by defendants but was already in septic shock.

Plaintiff never recovered and remained in a state of perpetual sepsis for the remainder of her life. As the direct and proximate cause of plaintiff's delayed diagnosis and treatment of the anastomotic leak, she developed sepsis, fistulas, abscesses, acute respiratory distress syndrome, arrest, strokes, seizures and ultimately her death. Plaintiff was a 38-year-old mother of three at the time of her death.

Defendants claimed that they timely evaluated plaintiff for possibly anastomotic leak when it became clinically evident on the forth postoperative day and the performed prompt surgical repair. Defendants further claimed that although plaintiff suffered multiple complications from infection related to the leak, even if the defect had been identified/repared 24 hours earlier, this likely not have changed the poor outcome.

The case settled for \$1,125,000.

Brian J. McKeen, counsel for plaintiff, provided case information.

**Type of action:** Medical malpractice, wrongful death

**Type of injuries:** Sepsis, fistulas, abscesses, acute respiratory distress syndrome, arrest, strokes, seizures, death

**Name of case:** Confidential

**Court/Case no./Date:** Confidential; confidential; Oct. 13, 2015

**Name of judge:** Withheld

**Settlement amount:** \$1,125,000

**Case evaluation:** \$1.5 million

**Insurance carrier(s):** Withheld

**Attorney for plaintiff:** Brian J. McKeen

**Attorney for defendant:** Anthony J. Paradiso

48

\$1.1 Million

### Parties in cancer lawsuit argue over standard of care

A 37-year-old went to his family doctor with history of rectal bleeding for at least one year on multiple occasions. There were consistent diagnoses of hemorrhoids and diverticulosis. No colonoscopy was ordered. By the time another doctor ordered a colonoscopy the cancer had become very advanced and a cure was impossible.

Plaintiff contended that the standard

of care required a colonoscopy at each presentation and it was more likely than not that the cancer was curable had it been treated by an oncologist in a timely manner.

Defendant argued that the cancer was not curable even at the initial presentation, and further contended that the family doctor complied with the standard of care.

The case settled for \$1.1 million. Caps limited damages for noneconomic loss.

William S. Stern, counsel for plaintiff provided case information.

**Type of action:** Medical malpractice

**Type of injuries:** Failure to diagnose colon cancer

**Name of case:** Palacios v. United States of America

**Court/Case no./Date:** U.S. District Court, Eastern District of Michigan; 13-14845; Feb. 4, 2015

**Name of judge:** Hon. John Corbett O'Meara

**Name of mediator:** Richard A. Sobie

**Demand:** \$3 million

**Settlement amount:** \$1.1 million

**Special damages:** \$600,000

**Most helpful experts:** Dr. Michael Bennett, gynecology, Grand Rapids; Dr. Paul Goldfarb, oncology, San Diego; Dr. Carol Westbrook, hematology and oncology, Wilkes-Barre, Pennsylvania

**Insurance carrier:** Self-insured

**Attorney for plaintiff:** William S. Stern

**Attorney for defendant:** Andrew J. Lieve

48

\$1.1 Million

### Auto suppliers clash over patent infringement

Defendants/counter-plaintiffs Takat A.G. and TK Holdings Inc. sued plaintiff counter-defendant I.E.E. Internationals Electronics in 2009 in Delaware. Both parties are automotive suppliers.

IEE explained from the start that it did not infringe on patents for "capacitive" occupant sensors, which use an electric field to detect the type of occupant sitting in a vehicle seat, but Takat did not agree to drop its claims. The case moved to federal court Detroit in 2010, when IEE





# Class Actions

2015 MILLION DOLLAR VERDICTS & SETTLEMENTS



1

\$116,394,000

## Feds investigated alleged auto parts pricing conspiracy

This case involves an alleged conspiracy among some of the automotive industry's largest manufacturers and suppliers of automotive parts. Plaintiffs' counsel represents consumers who purchased or leased a new vehicle that included one or more of the parts at issue (the "End Payor Class").

Plaintiffs allege that defendants agreed, during meetings and conversations, to sell certain automotive parts at noncompetitive prices to automobile manufacturers in the U.S. and elsewhere.

The U.S. Department of Justice and the Japanese Fair Trade Commission, among other international law enforcement bodies, had been investigating these



MCLATCHER



ALLARD

conspiracies in the market for automotive parts since at least February 2011. In addition, the Federal Bureau of Investigation has participated in raids and executed search warrants in some of defendants' offices.

The following settlements entered into between various defendants and the end payor plaintiffs' class have been preliminarily approved by the U.S. District Court:

- \$46,740,000 settlement by Hitachi Automotive Systems Ltd. related to the following parts: air flow meters, fuel injection systems; alternators, electronic throttle bodies, ignition coils, inverters, motor generators, starters and valve timing control devices.

- \$17,100,000 settlement by Panasonic Corp. and Panasonic Corp. of North America related to the following parts: HID ballasts, steering angle sensors and switches.

- \$7,410,000 settlement by TRAD Co. Ltd. and TRAD North America Inc. related to the following parts: ATF warmers and radiators.

The following settlements are pending preliminary approval by the U.S. District Court:

- \$38 million settlement by Sumitomo Electric Industries Ltd., Sumitomo Wiring Systems Ltd., Sumitomo Electric Wiring Systems Inc. and Sumitomo Wiring Systems Inc. related to the following parts: heater control panels and wire harnesses.

- \$7,144,000 settlement by Fujikura and Fujikura Automotive America LLC related to wire harnesses.

Devon P. Allard, co-counsel for the indirect plaintiffs (end payors/consumers),

provided case information.

**Type of action:** Consolidated class-action cases in multidistrict litigation against numerous automotive parts suppliers alleging causes of action for violation of Section 1 of the Sherman Act, State Antitrust Statutes and Consumer Protection Statutes

**Type of injuries:** Financial

**Name of case:** *In re Automotive Parts Antitrust Litigation*

**Court/Case no./Date:** U.S. District Court, Eastern District of Michigan; 12-MD-02311; Sept. 24, 2015

**Name of judge:** Hon. Marianne O. Battani

**Settlement amount:** \$116,394,000

**Attorneys for plaintiff:** E. Powell Miller, Devon P. Allard, Mariell R. McLatcher, Steven Williams, Hollis Salzman, Marc Seltzer (representing indirect plaintiffs, end payors/consumers)

**Attorney(s) for defendant:** Withheld

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\$58 Million

## Auto dealerships reach settlement in supplier price-fixing case

U.S. District Court Judge Marianne O. Battani approved several 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. The settlements approved in 2015 total more than \$58 million.

The settlements are part of the ongoing *In re Automotive Parts Antitrust Litigation*. The multidistrict litigation involves claims related to alleged price-fixing and bid-rigging on 29 different parts, with 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, co-counsel for automobile dealership plaintiffs, 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; Nov. 19, 2015

**Name of judge:** Hon. Marianne O. Battani

**Settlement amount:** \$58 million

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

**Attorney(s) for defendant:** Withheld

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\$7 Million

## Livonia homeowners sought damages from sewage backup

On May 26, 2011, hundreds of homes in

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