Brenda Ren

From: Mantese Honigman PC <gmantese@manteselaw.com>
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MANTESE HONIGMAN, PC
BUSINESS LAW NEWSLETTER

ARTICLE ON SHAREHOLDER AND MEMBER OPPRESSION

The law on shareholder and member oppression under MCL 450.1489 (shareholder oppression) and MCL 450.4515 (LLC member oppression) has been steadily developing in the Michigan Business Courts. This is particularly true since *Madugula v Taub,* which Gerard Mantese argued to the Michigan Supreme Court on behalf of the plaintiff in December 2013. Michigan's two oppression statutes protect shareholders and members from illegal, fraudulent, and willfully unfair and oppressive conduct.

The Michigan Business Courts have been particularly active in developing the law on oppression cases. For a thorough discussion of recent significant trial court decisions on oppression and fiduciary duty, please see, "Michigan Business Courts and Oppression: A Review of How Michigan Business Courts Have Treated Oppression Issues Since Madugula v Taub", by Gerard

V. Mantese, Douglas L. Toering, and Fatima M. Mansour.
gmantese@manteselaw.com
dtoering@manteselaw.com
fmansour@manteselaw.com

2016 VERDICTS AND SETTLEMENTS

Mantese Honigman, PC recovered more million and multi-million dollar business law judgments and settlements than any other firm in the State of Michigan, as reported by Michigan Lawyers Weekly last month.

Verdicts and Settlements

$125 Million. Gerard V. Mantese and Alex Blum represented numerous automotive dealerships in a large class action against multiple automotive suppliers. The class action was brought against an array of defendants for widespread price-fixing. The U.S. District Court, Eastern District of Michigan, approved settlements in the case totaling $125 million.
gmantese@manteselaw.com

$1.55 Million. In *Madugula v Taub*, the plaintiff, Madugula, successfully argued shareholder oppression, where the defendant terminated Madugula's employment in violation of a supermajority provision in a shareholders' agreement, and froze Madugula out of any involvement in the company's management decisions.

On appeal, the Michigan Supreme Court – in the first shareholder oppression case ever taken up by the high court – held that the oppression cause of action was an equitable claim, and that breach of a shareholders' agreement can be evidence of oppression. On remand, the trial court used the original jury's findings and found oppression and entered a judgment in favor of Mr. Madugula totaling $1.55 million, with interest.
gmantese@manteselaw.com

$2.1 Million. MH attorneys Gerard V. Mantese and Fatima M. Mansour obtained a $2.1 million recovery for a squeezed-out shareholder of a Michigan company. This case involved a minority shareholder who was discharged as an employee, cut off from financial information, and locked out of the company. The firm successfully argued that these actions substantially damaged plaintiff's shareholder interest, because salaries were a significant way in which the owners shared profits in the company. As such, this was classic shareholder oppression under MCL 450.1489. Mantese and Mansour obtained a settlement for their client in the amount of $2.1 million.
fmansour@manteselaw.com

$2.2 Million. MH obtained a $2.2 million recovery for a damaged plaintiff in a breach of contract case. In this case, the plaintiff agreed to purchase and demolish defendant's factory. Upon demolition of the factory, the plaintiff discovered substantial contamination, at which time the defendant locked plaintiff out of the property. Plaintiff sued for breach of contract and a preliminary injunction; defendant brought a counterclaim against plaintiff for damages. Robust motion practice and facilitations followed, and the parties agreed that plaintiff would receive the promised real estate. Gerard Mantese and Alex Blum obtained a settlement for their client valued at $2.2 million. ablum@manteselaw.com

$1.02 Million. Ian M. Williamson, with help from Gerard V. Mantese and Sara K. MacWilliams, recovered over $1 million for plaintiff shareholders after control of the plaintiffs' company had been held hostage by the company CEO and an outside sales representative. The co-defendants had attempted to freeze plaintiffs out of their own business by entering into one-sided "exclusive" sales agreements without disclosure to the board of directors or shareholders. After plaintiffs won a significant ruling allowing for the invalidation of the agreements on grounds of breach of fiduciary duty by the company's President, the case settled for $1.02 million.
iwilliamson@manteselaw.com

$1 Million. David Honigman worked tirelessly to obtain benefits for a veteran suffering from "locked-in" syndrome. The paralyzed veteran brought suit against the United States Department of Defense, challenging its refusal to pay for skilled nursing facility care. Ultimately, the court adopted the positions advanced by plaintiff, and following entry of judgment in favor of plaintiff, the parties engaged in negotiations. The matter settled for a reversal of health care coverage denials, and for future care.
dhonigman@manteselaw.com

UPDATES IN PEER REVIEW, AND PERSPECTIVES FOR SETTLING LITIGATION BETWEEN A PHYSICIAN AND HEALTH CARE ENTITY

Physician peer review is an important and ever-changing topic in Michigan and federal law. It is critical for attorneys representing physicians and health care facilities to be aware of potential concerns in settling litigation between these parties. For example, just because a physician has settled his or her private dispute with a hospital or health care facility, does not mean the hospital's peer review

reporting requirements have been lessened.

As such, despite an end to litigation, a physician may still face career-jeopardizing implications from peer review. It is important for physicians and their legal counsel to understand these potential concerns and learn how to handle them during settlement negotiations. For an important discussion on this issue, please see, "Settled the Case for a Physician-Client? Not so Fast!" by Theresamarie Mantese and Fatima M. Mansour.
tmantese@manteselaw.com
fmansour@manteselaw.com

MANTESE HONIGMAN PC HEADS TO MICHIGAN SUPREME COURT TO ARGUE SECOND OPPRESSION CASE TO REACH HIGH COURT

In December 2016, Gerard V. Mantese argued Frank et. al. v. Linkner, MSC Case No. 151888, to the Michigan Supreme Court on behalf of the plaintiffs. The case arose out of the sale of a closely-held company, and the distribution of its proceeds. The issues before the Michigan Supreme Court were: (1) whether MCL 450.4515(1)(e) is a statute of repose, a statute of limitations, or both; and (2) when the plaintiffs' cause of action accrued.

DEVELOPMENTS IN THE LAW OF COURT-APPOINTED RECEIVERS

There are interesting developments in the law of court-appointed receivers. Importantly, until recently, it was unclear whether a court-appointed receiver had the power to pursue breach-of-fiduciary duty litigation against officers and directors. In *Coppola v Manning*, the Michigan Court of Appeals held that a receiver could stand in the shoes of the corporation in bringing such a suit. For a thorough discussion of this case, and the scope of the power of a court-appointed receiver generally under Michigan law, see "Michigan Court-

Appointed Receivers: Clarification of Powers" by Sara MacWilliams and Jason D. Killips.
smacwilliams@manteselaw.com

STATE BAR OF MICHIGAN BUSINESS LAW SECTION

Doug Toering, a partner at MH (pictured right), recently completed his tenure as Chair of the Business Law Section of the State Bar of Michigan and Ian Williamson, a partner at MH (pictured left), was recently voted on to the Council of the Business Law Section.

TRAVELING LAWYERS CLUB

Last year, Gerard Mantese formed Traveling Lawyers Club ("TLC") to provide free legal advice to economically disadvantaged and working class individuals who do not have access to the legal system. Gerard Mantese and his firm's top notch legal team participate in providing legal services at various locations throughout the metro Detroit area. On January 28, 2017, Gerard and James Buster, a firm associate, provided assistance on a wide array of legal issues at St. Christine Soup Kitchen in Detroit.

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Michigan Office
1361 E. Big Beaver Rd. | Troy, MI 48083
Phone: 248-457-9200 | Fax: 248-457-9201

Missouri Office
2123 Marconi Ave. | St. Louis, MO 63110
Phone: 314-656-6927

www.manteselaw.com

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