

THE LARGEST SETTLEMENTS OF 2001

Landlord-Tenant, Class Action Claim Are Two Stand-Out Settlements

24 Claims Settle For \$1 Million Or More

A \$27 million settlement in the hotly-contested landlord dispute between the Detroit Lions football team and the City of Pontiac, and a \$7.15 million class-action recovery against beleaguered Northwest Airlines top the list of million-dollar settlements re-

ported to Michigan Lawyers Weekly in 2001.

Unlike jury verdicts, settlements are often confidential and preclude the publication of parties' names and other pertinent facts. Accordingly, a settlement is often only

reported when a party — usually the plaintiff — submits a Verdicts & Settlements report to Michigan Lawyers Weekly.

For 2001, Lawyers Weekly was notified of and received appropriate verification of 24 settlements of \$1 million or more. Some of

these settlements were just recently brought to our attention. Thus, they are being published in this special section for the first time.

Following are the reports of the 24 settlements.



Landlord-Tenant Suit Results In \$27M Settlement

In December 2000, Pontiac filed suit after the Lions announced their intention to breach their lease of the Pontiac Silverdome by leaving early to begin play at Ford Field in 2002. Pontiac sought specific performance by way of an injunction and/or money damages.

The Lions counterclaimed, alleging that Pontiac had improperly collected millions in stadium service fees and seeking a declaration that the lease terminated after the 2004 season, not after the 2005 season as Pontiac maintained. The Lions also contended that Pontiac could easily mitigate all of its damages by promptly redeveloping the Silverdome site to its highest and best economic use. On dispositive motion, the court ruled that the lease expired after the 2005 season.

The plaintiffs argument was that Pontiac alleged economic damages of approximately \$30 million in rents, fees and other lost revenues as well as approximately \$15 million in other consequential losses. Pontiac also alleged the loss of intangible benefits associated with the Lions' early departure.

The Lions alleged that Pontiac would only suffer approximately \$8 million in net economic losses which they claimed would be entirely offset by taxes generated by alternative use of the property. The Lions maintained that Pontiac would be approximately \$20 million better off if the Lions were allowed to leave and claimed that Pontiac owed approximately \$7 million in service fees to the Lions.

Following several days of private facilitation with attorneys Thomas Hardy and Elbert Hetchett, the trial court ordered the parties to appear for a final settlement conference a few days prior to trial. At approximately midnight on Nov. 28, 2001, the parties placed the essential terms of their settlement on the record.

Type of action: Litigation concerning the Detroit Lions' 1973 sublease and license agreement for the Pontiac Silverdome

Type of injuries: Economic losses including rents, fees, revenues from concessions, parking, suites, advertising, and so forth, as well as other consequential and intangible losses caused by the Lions' early departure

Name of case: City of Pontiac, et al v. The Detroit Lions, Inc.

Court/case no./date: Oakland County Circuit Court, #00-027871-CZ, Nov 28, 2001

Name of judge: Fred M. Mester

Settlement amount: \$27.25 million settlement in addition to all past due amounts and future amounts owed by the Lions under the contracts and agreements between the parties. Further, the Lions gifted the physical assets of the Practice Bubble to Pontiac and agreed to a dismissal with prejudice of their counterclaims.

Attorneys for the plaintiff: Jon Steger, Thomas H. Walters and Nancy Komer Stone

Attorney for the defendant: Withheld

Name/city of most helpful experts: Plants & Moran; Gerald Scully, Ph D



False Imprisonment

Class Action

Type of Action: Class action

Injuries alleged:

Forced detention on board aircraft of approximately 7,000 people (false imprisonment claim)

Name of case:

Kozzari, et al v. Northwest Airlines

Court/case no.:

Wayne County Circuit Court, #99-900-422-NO

Name of judge:

Daphne Means Curtis

Jury demand:

Yes

Amount of settlement:

\$7.15 million

Date:

Jan. 9, 2001

Attorney for the plaintiff:

Lawrence Charloos

Attorney for the defendant:

Withheld

Name/city of most helpful experts:

Edward McKriny and Jon Oestreich, Minneapolis

Highest offer:

\$5.5 million



Brain Injury Victim Recovers \$5 M-Plus

Attendant Care Worth No Less Than \$25 Per Hour

On Oct. 17, 1979, Owen Hawkins Jr., then 13 years old, was struck by a car. He was hospitalized for 15 months and was then an in-patient at rehabilitation facilities for an additional five months. He was discharged to Sharon Pugh's care (his mother), paralyzed on the left side, confined to a wheelchair, unable to speak intelligibly or cognitively track, suffering severe seizures and apnea and a neurogenic bladder and bowel with full incontinence of his bowel requiring a catheter.

For Pugh's continued nursing care, she was initially paid \$2.08 beginning in 1980, and subsequent adjustments brought the payment in 2000 to \$7.05 per hour for the care she provided.

Both the former and the current no-fault adjusters testified that Pugh was entitled to no less than \$25 per hour for the care she provided.

Type of action: No Fault
Type of injuries: Massive brain damage; seven months coma; residual left-side paralysis leaving the plaintiff profoundly impaired

Name of case: Hawkins v. Citizens Insurance Company of America

Court/case no./date: Oakland County Circuit Court, #00-028330-NF, Aug. 22, 2001

Name of judge: Fred M. Mester

Settlement amount: \$5 million consent judgment plus future attendant care rates established through Aug. 31, 2008

Attorney for the plaintiff: Arthur Y. Liss

Attorney for the defendant: Withheld

Name/city of most helpful experts: Treating physicians

Insurance carrier: Citizens Insurance Company of America



Confidential Settlement Of \$6.6M For Burn Injuries

Plaintiff's counsel obtained a settlement on behalf of Jane Doe for burn injuries allegedly caused by the negligence of an employee of [REDACTED]

According to plaintiff's counsel, more details could not be disclosed per the confidentiality agreement.

Type of action: Civil

Type of injuries: Burns

Name of case: Jane Doe v. Entity

Court/case no./date: Confidential

Name of judge: Confidential

Settlement amount: \$6.6 million

Attorneys for the plaintiff: Richard Halpern, Steven Weston and Thomas Wuon

Attorney for the defendant: Withheld



Misread Fetal Monitor Results In \$3.45M Settlement

Defendant Claimed C-Section Not Necessary

This case involved the labor of plaintiff Jane Doe and an alleged delay in delivery of plaintiff minor.

The facts are that the plaintiff mother pre-

sented to defendant hospital in labor and there was allegedly evidence of diminished beat-to-beat variability on the fetal monitor tracings.

Over the ensuing course of labor, the monitoring pattern gradually deteriorated to one of tachycardia, variable decelerations with a late return and late decelerations.

Despite the non-reassuring tracings, a Pitocin augmentation was initiated and was allowed to continue despite electronic evidence of a non-reassuring tracing. Because of the failure to appropriately monitor and treat the non-reassuring fetal status, delivery did not occur via a timely cesarean section and the plaintiff minor sustained hypoxic/ischemic insults to multi-organs, including the brain.

The defense of the case centered around an allegedly innocuous fetal heart monitor tracing and the claim that there was no need to perform a cesarean section.

The case resolved a few weeks prior to trial. The case had mediated for \$2 million.

Type of action: Medical malpractice

Type of injuries: Mental retardation; cerebral palsy

Name of case: Confidential

Court/case no./date: Confidential

Name of judge: Confidential

Jury demand: Yes

Settlement amount: \$3.45 million

Attorneys for the plaintiff: Stanley S. Schwartz, Richard D. Fox, Robert Schwartz and Randall M. Blau

Attorney for the defendant: Withheld

Highest offer: \$3.45 million



Delayed Delivery Cause Of Severe Neurological Damage

Med-Mal Claim Results In \$3.1M Settlement

This case involved the labor of plaintiff Jane Doe and an alleged delay in the delivery of plaintiff minor.

The plaintiff mother presented to defendant hospital in labor and shortly thereafter evidenced a pattern of non-reassuring fetal heart rate status on the monitor tracings, which was evidenced by late decelerations, loss of beat-to-beat variability and decelerations with a slow recovery and intermittent bradycardia.

The attending obstetrician was not contacted to be apprized of the situation and instead there was an increase in the administration of Pitocin.

Shortly thereafter, the fetal heart rate continued to deteriorate with flat bradycardia and no variability. The cesarean section was not timely accomplished and the plaintiff minor suffered severe neurological damage, including cerebral palsy, developmental delays and hearing loss.

Type of action: Medical malpractice

Type of injuries: Mental retardation; cerebral palsy

Name of case: Confidential

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15
\$2.3 MILLION

Motor Vehicles

Fractures
Type of Action: Auto Accident
Injuries alleged: Fractured ankle; fractured knee; fractured hip
Name of case: Armando Reyes, a/k/a Armando Reyes-Arnaga and Nora Reyes v. City of Detroit, et al
Court/case no.: Wayne County Circuit Court, #99-916534-NI

Name of judge: Louis F. Simmons
Amount of settlement: \$2.35 million
Date: Jan. 23, 2001

Attorney for the plaintiff: John C. Kaplansky
Attorney for the defendant: Withheld

Name/city of most helpful experts: David J. Sheperdon, Howard City
Insurance carrier: Self-insured
Highest offer: \$2.35 million

17
\$1.8 MILLION

\$1.8M Settlement In Brain Injury Case
Defendant's Admission Was Allowed

The plaintiff in this case is a 15-year-old boy who was the front seat passenger in a car turning left that was hit broadside by an oncoming car in the intersection.

The plaintiff was brain injured as a result of the accident. The plaintiff sued both the driver of the other car and the driver of the car he was riding in. The question of liability hinged on which driver had run a red, or yellow, signal.

The primary issue in the case concerned liability of the driver of the other car, who stated repeatedly at the scene that she "ran the red light." This defendant later asserted that she had run a yellow light.

The case settled on the first day of trial after Judge Leiber ruled that he would allow the testimony of several witnesses who had heard the defendant's admissions at the accident scene.

Type of Action: Motor vehicles — personal injury
Type of Injuries: Permanent brain injury
Name of case: Perdok v. Country Roads, Inc. Et al.
Court/case no./date: Kent County Circuit Court, #99-07386-NI, May 31, 2001

Name of judge: Dennis B. Leiber
Jury demand: Yes
Settlement amount: \$1.8 million settlement
Attorneys for the plaintiff: William J. Waddell and Thomas Koemke
Attorney for the defendant: Withheld
Name/city of most helpful experts: Dr. Andrea Kuldanek, Grand Rapids
Insurance carrier: Citizens; Auto-Owners

18 (TIE)
\$1.75 MILLION

Business Entity Pays \$1.75M For Brain Injury

The plaintiff's counsel achieved a settlement of \$1.75 million against a business entity for a client who sustained a closed-head injury in a vehicular accident.

Type of Action: Motor Vehicles
Type of Injuries: Brain injury; shoulder and neck injuries requiring surgery; multiple contusions

Name of case: Doe v. Business Entity
Court/case no./date: Confidential; March 14, 2001

Name of judge: Confidential
Jury demand: No
Settlement amount: \$1.75 million
Attorneys for the plaintiff: Bonnie Y. Sawusch and Richard L. Halpern

Attorney for the defendant: Withheld
Name/city of most helpful experts: Anthony Garbois Jr., Ph.D., Vocational Economics, Inc., Louisville, Ky.; Jonathan W. Hoptans, M.D., Kalamazoo; Don. L. VanOostenberg, Ph.D., Human Resource Associates, Grand Rapids; Thomas C. Fuller, Ph.D., Human Resource Associates, Grand Rapids; Bryan D. Vleser, M.D., Fortages; Thomas G. Ryan, M.D., Kalamazoo; Roy P. Welton, MA, CRC, CSW, LLP, Welton & Associates, Grand Rapids
Highest offer: \$1.75 million

21
\$1.5 MILLION

Motor Vehicles

Wrongful Death
Type of Action: Auto Negligence Wrongful Death
Injuries alleged: Death of a 34-year-old woman (single with no dependents)
Name of case: Estate of Kelly Short v. Gupta
Court/case no.: Oakland County Circuit Court, #00-022964-NI

Name of judge: Barry C. Howard
Jury demand: Yes
Amount of settlement: \$2 million

Date: Feb. 27, 2001
Attorney for the plaintiff: Louis G. Corey
Attorney for the defendant: Withheld
Insurance carrier: AAACNA
Highest offer: \$2 million

Other useful information: Policy limits were eventually offered despite mediation of \$1.5 million.

16
\$2.3 MILLION

Industrial

Hi-Lo Operation — Negligence

Type of Action: Industrial accident/Negligent operation of hi-lo
Injuries alleged: Traumatic mild brain injury; shortening of leg by two inches; plastic surgery on face; broken elbow
Name of case: Deesley v. Accurob, et al
Court/case no.: Wayne County Circuit Court, #99-911-159-NO

Name of judge: R. Zolkowski
Jury demand: Yes
Amount of settlement: \$2.3 million

Date: Feb. 14, 2001
Attorney for the plaintiff: Lawrence S. Charloos
Attorney for the defendant: Withheld
Name/city of most helpful experts: Jay Inwald, Ph.D.; Duane Meeker
Highest offer: \$2.3 million

Other useful information: The plaintiff, the 47-year-old president and chief operating officer of a well-respected business heating and cooling company, was injured while inspecting heating units near the ceiling of the defendant's premises. The defendant provided a forklift and basket to raise the plaintiff some 15-20 feet to the heating units. The basket, which had not been secured to the forklift, tipped, causing the plaintiff to fall face first on the concrete flooring with the basket landing on his leg. The plaintiff's expert stated that the particular basket used in the undertaking did not meet OSHA requirements in numerous regards but most particularly in that it did not have a method of being attached to the forklift.

18
\$1.75 MILLION

'Advanced Age' Plaintiff Settles Med-Mal Claim For \$1.75M
'MEDICIOUSLY OBTAINED LIFE CARE Plan Essential

This case involved the pre-suit settlement of a claim by an 80-year-old woman who was admitted to the hospital for a total hip replacement. She experienced an intradural hematoma related to the spinal anesthetic.

It was alleged that there was a delay in diagnosing same and the delay resulted in a permanent lower extremity paralysis and loss of bowel and bladder function.

This independent otcogenarian was thereafter confined to a wheelchair and requires 24-hour attendant care.

Plaintiff's counsel was able to resolve the case for a very substantial sum with the assistance of a meticulously detailed life care plan and economic data substantiating an inflationary increase in the cost of medical care and services significantly in excess of the cost of non-medical goods and services.

This case demonstrates that injuries to non-wage earning individuals of advanced age can have significant value.

Type of action: Medical malpractice
Type of Injuries: T-11, T-12 paraplegia with loss of bowel and bladder function
Name of case: Confidential
Court/case no./date: Settled prior to filing suit
Name of judge: N/A

Settlement amount: \$1.75 million (\$934,498 in cash and a structure with a cost of \$818,147)
Attorneys for the plaintiff: Stanley S. Schwartz, Richard D. Fox and Jay Yazoo
Attorney for the defendant: Withheld

20
\$1.6 MILLION

Failure To Diagnose Settles For \$1.6M
Woman Died From Intercerebral Hemorrhage

This medical malpractice case involved the failure to timely diagnose and treat pre-eclampsia and the resulting hypertension in a 36-year-old woman resulting in her death from an inter-cerebral hemorrhage.

The plaintiff's decedent presented to defendant hospital for delivery of her second child. Her prenatal period had been normal with no evidence of pre-eclampsia. However, during the intrapartum and postpartum period, the patient exhibited signs, symptoms and complaints indicative of pre-eclampsia, including an intrauterine growth retarded baby, a placental abruption, elevated blood pressures, headache, abdominal and epigastric pain, nausea, vomiting and oliguria. The nurse, resident and covering obstetrician failed to appreciate the potential significance of these signs, symptoms and complaints and no work-up was performed to determine if the patient had pre-eclampsia.

The patient experienced seizures at which time her condition became eclampsia. Magnesium sulfate was started to treat the eclampsia; however, no anti-hypertensive medications were given to control the patient's blood pressure, which continued to spiral upward.

The patient continued to be symptomatic and, approximately eight hours after delivery, plaintiff's decedent suffered a fatal intracerebral hemorrhage. An extensive neuropathological exam was conducted and no evidence of aneurysm or malformation was found.

The plaintiff alleged that the clinical, radiographic, laboratory and pathology findings were indicative of pre-eclampsia/eclampsia and that the standard of care required timely work-up, diagnosis and prophylactic treatment with magnesium sulfate. Additionally, to comply with the standard of practice, the patient should have been treated with anti-hypertensive medications which would have easily lowered the patient's blood pressure to a safe level. Since this was postpartum hypertension, there was no concern over medication risks.

21 (TIE)
\$1.5 MILLION

Developer Receives \$1.5M Settlement

Ordinance Rescinded, Evidence Of Racial Animus Established

The City of Bay City granted a developer of a low-income housing project an ordinance for payment in lieu of taxes (PILOT). After city commissioners visited a similar project by the developer and remarked as to minority residents, city commissioners voted to rescind the PILOT ordinance.

The mayor vetoed the commissioners' vote to rescind the PILOT ordinance, but the city subsequently processed an improper public referendum to rescind the PILOT ordinance.

The developer and the project limited partnership filed a federal lawsuit against the city, and the city commissioners, including council for EPC and procedural and substantive due process violations, and breach of contract.

The city took the position that the mayor's veto of the commissioners' vote to rescind the PILOT ordinance eliminated liability for termi-

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SETTLEMENTS
OF 2001**

■ CONTINUED FROM PAGE B11

nation of the low-income housing project. The city also argued that the developer and the limited partnership did not receive adequate financing for the project. However, discovery confirmed the plaintiffs' receipt of proper financing with support of MSHDA. Discovery also uncovered the mayor's admissions regarding racial motivations of the commissioners.

Further, the city lacked an explanation for the city's processing of an improper public referendum which rescinded the PILOT ordinance and completely terminated the low-income housing project.

According to plaintiffs' counsel, the key to winning was that, prior to the assignment of the case to Judge Lawson, the court granted a motion to dismiss claims against the commissioners in their individual capacity. However, the court later granted leave to the plaintiffs to file a motion for rehearing or reconsideration as to the commissioners' individual liability based on their receipt of a legal opinion from their attorney prior to their vote to rescind the subject PILOT ordinance. The plaintiffs argued that the commissioners could not avoid personal liability if they knowingly voted for an illegal act.

The plaintiffs' motion for rehearing or reconsideration was not decided at the time of settlement. Extensive depositions of the mayor and the commissioners were also critical in establishing evidence of racial animus.

Type of action: Civil rights, contract
Type of injuries: Lost profits, development costs
Name of case: Sterling, et al. v. city of Bay City, et al.
Court/case no./date: U.S. District Court, Eastern District of Michigan, #00-CV-10017-BG, Nov. 21, 2001
Name of judge: David M. Lawson

Settlement amount: \$1.5 million settlement/consent judgment (\$750,000 paid by Michigan Municipal Risk Management Authority, remaining \$750,000 to be paid by city)
Attorney for the plaintiff: William G. Tishkoff
Attorney for the defendant: Withheld
Name/city of most helpful experts: William D. King, Ph.D., Lansing; Jeffrey D. Barsky, C.P.A., Maryland
Insurance carrier: Michigan Municipal Risk Management Authority
Highest offer: \$1.5 million



**Tenacity Results
In \$1.23M
Settlement**

*Terrific Client & Mediation
Summary Essential*

The plaintiff was driving south on US-127. The defendant, who was driving north on US-127, fell asleep and crossed the median. The vehicles hit head on. Both were traveling at approximately 60-70 mph. The other driver and three passengers all died within months of the accident.

The plaintiff's counsel argued clear liability. According to plaintiff's counsel, the key to winning was a terrific client and a terrific mediation summary. The case settled just before the

mediation hearing. Moreover, he told Lawyers Weekly he Med early and "stayed on Citizens continuously."

Plaintiff's counsel also brokered settlement for his client and two death cases represented by other lawyer. There was \$1.5 million total coverage.

Type of action: Auto negligence
Type of injuries: Orthopedic, fractured pelvis; fractured sacrum; fractured tibia; fractured fibula, burns to right hand; fractured nose; scarring
Name of case: Latimer v. Estate of Robert L. Price, deceased
Court/case no./date: Ingham County Circuit Court, #00-92003-M, March 14, 2001
Name of judge: William E. Collette
Settlement amount: \$1.23 million settlement
Attorney for the plaintiff: Patrick J. Nolan
Attorney for the defendant: Withheld
Name/city of most helpful experts: Robert Anceel, economic, Southfield; Jeffrey R.A. Fishman, M.D., plastic surgery, Troy; Scott Groesbeck, M.D., orthopedics, Lansing
Insurance carrier: Citizens



Motor Vehicles

Negligence

Type of Action:

No-fault motor vehicle injury

Injuries Alleged:

Paralyzed from the waist down; fractured left arm requiring surgery; closed-head injury

Name of case:

John Doe v. Davidson's Trucking

Court/case no.:

St. Joseph County

Name of judge:

None

Jury demand:

N/A

Amount of settlement:

\$1 million policy limits (minus \$500 paid under Michigan's mini-tort rule)

Date:

May 2, 2001

Attorney for the plaintiff:

Richard L. Migala

Attorney for the defendant:

None

Name/city of most helpful experts:

Daniel Lee, Ph.D., East Lansing

Insurance carrier:

Sentry Insurance Company

Highest offer:

\$1 million policy limits (minus \$500 paid under Michigan's mini-tort rule)

Other useful information:

The plaintiff is a 73-year-old male who was struck by a semi truck that ran a red light at a busy intersection. The plaintiff was an unrestrained driver at the time of the collision. The plaintiff suffered numerous injuries, which included multiple fractures that required the insertion of rods to stabilize his back resulting in paralysis from the waist down, a fractured left arm that required open reduction and fixation with the insertion of plates and screws, and a closed-head injury.

The case was settled for the policy limits of \$1 million less \$500 the insurance carrier had to pay to the owner of a third vehicle involved in the accident under Michigan's mini-tort rule.

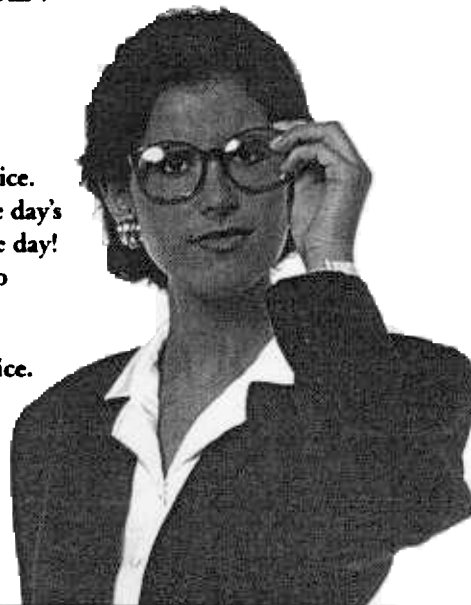
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