

Verdicts & Settlements

Employment

Whistleblower succeeds on wrongful termination claims

\$950,000 settlement



MARKO

This is an employment case alleging claims of wrongful termination based on retaliation and Whistleblower Protection Act, among others. The plaintiff was an employee of a local company and engaged in protected activity. He believed he was being retaliated against and contacted counsel. Plaintiff's counsel wrote a letter to the employer. Shortly thereafter, the plaintiff was terminated.

The plaintiff filed suit under the Elliott-Larsen Civil Rights Act, the Whistleblower Protection Act and on other contractual theories. The parties engaged in extensive written discovery and settled with the assistance of the mediator.

Jonathan Marko, counsel for the plaintiff, provided case information.

Type of action: Employment

Injuries alleged: Wrongful termination, loss of income, loss of stock and emotional damages

Name of case: Confidential

Court/Case no./Date: Confidential; 05/26/2022

Tried before: Jury

Name of judge: Confidential

Name of mediator: Kathy Bogas

Settlement amount: \$950,000

Attorney for plaintiff: Jonathan Marko, Detroit

Medical Malpractice

Jury finds doctor did not breach proper standard of care

No cause



DARDAS

Michael Winchell was a 58-year-old married man who was employed at Michigan Sugar. His job required him to move 50-pound bags of sugar all day, every day. He tore his rotator cuff and was referred to orthopedic surgeon Mark Stewart, M.D. for repair.

Dr. Stewart performed a rotator cuff repair surgery on Feb. 8, 2016, then referred him to physical therapy. The patient was discharged from PT on April 4, 2016, with multiple PT visits left available to him if needed.

At the time of his discharge, he was documented as having 0/10 pain, 5/5 strength, full range of motion and met all goals, one of which was lifting 50 pounds. PT reported those details to

Dr. Stewart who saw the patient the following day in his office. Dr. Stewart and the patient had a candid discussion about the patient's ability to return to work in the context of the patient's heavy job after his significant tear and surgery.

The patient told Dr. Stewart he wanted to return to work, in part, because he was concerned about losing his job and that he believed he could do the job. He also told Dr. Stewart that light duty work was not available to him. Dr. Stewart informed the patient that the tear was significant, and the repair surgery was limited to the anatomy he had available given the size of the tear. He told the patient the repair would either hold or it wouldn't; if it didn't, a reverse shoulder arthroplasty would be the next step.

Mr. Winchell and Dr. Stewart both acknowledged the details of this discussion in their respective testimony. Dr. Stewart returned the patient to work without restrictions 63 days after the rotator cuff repair surgery. On April 11, 2016, about six hours after returning to work on his first day back, Mr. Winchell experienced pain in his right shoulder, which was documented as a re-injury. And just as Dr. Stewart and the patient had discussed, the next step was a reverse shoulder arthroplasty, which Dr. Stewart performed on April 18, 2016. The patient went through PT again and had an objectively excellent result that was memorialized in a video interview testimonial obtained with the patient's permission at one of his last visits to Dr. Stewart's office.

Plaintiff claimed that within months of being discharged from PT he began to experience profound dysfunction to his dominant right arm that resulted in disability.

The plaintiff claimed that Dr. Stewart returned the patient to work without restrictions "too soon" and that doing so resulted in the need for further surgery, dysfunction and disability.

Dr. Stewart maintained that his decision to return the patient to work was an appropriate one based on his own evaluation of the patient, which included his reasonable reliance on the data from PT.

The jury unanimously agreed that Dr. Stewart did not breach the standard of care. Tim Dardas, counsel for the defendant, provided case information.

Type of action: Medical malpractice

Injuries alleged: Need for reverse shoulder arthroplasty, neurologic injury, disability

Name of case: Winchell v. Mark Stewart, M.D.

Court/Case no./Date: Bay County Circuit Court; 18-3208-NH; 05/06/2022

Tried before: Jury

Name of judge: Hon. Joseph K. Sheeran

Demand: No formal demand pre-trial, but the jury was asked to award between \$550,000 – \$1,000,000, depending on life expectancy.

Highest offer: \$0

Case evaluation: \$200,000

Verdict: No cause

Most helpful experts: Mark Stewart, M.D., orthopedic surgery, Bay City; Dean Schueller, M.D., orthopedic surgery, Ypsilanti

Insurance carrier: ProAssurance

Attorney for defendant: Tim Dardas, East Lansing

Member Oppression / Fiduciary Breach

Multi-generational family-owned business split after mediation

\$75,500 settlement



ROELANS

This case involved a multi-generation, family-owned logging business in Hale. The plaintiff filed this member oppression / breach of fiduciary duty case against his brother seeking his removal as a manager from the company and "stripping defendant of his 'control' over the Company in his manager and membership capacity" and a court ordered redemption of his ownership interest, based on various abuses of power in his capacity as a "member in control."

After extensive discovery and motion practice, the parties mediated the matter and agreed that the defendant would give up his 50% ownership interest and resign all positions in the company in exchange for payment of \$65,500 and sell his interest in adjacent property for \$10,000. Plaintiff is now in full control of the company.

Plaintiff's law firm provided case information.

Type of action: Member oppression, fiduciary breach

Injuries alleged: Damages; court-ordered redemption

Name of case: Bain v. Bain

Court/Case no./Date: Kent County Circuit Court; 2021-05696-CBB; 04/06/2022

Tried before: Mediation

Name of judge: Hon. Terrence J. Ackert

Name of mediator: Dennis Barnes

Verdict: No cause of action

Settlement amount: \$75,500

Mediation settlement: \$65,500 payable by plaintiff to defendant for defendant's entire ownership interest, plus \$10,000 for defendant's ownership interest in an adjacent real estate parcel

Most helpful expert: Thomas A. Frazee

Attorney for plaintiff: Linda J. Roelans, Troy

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