

# Verdicts & Settlements

## Member Oppression / Fiduciary Breach

### Arbitrator finds improper self-dealing by majority owner

#### \$500,000 arbitration award



ROSSMAN



VIAR

This case of member oppression and fiduciary breach was commenced by RV Solutions Group, LLC, the 30% minority owner of a company called RV Quest, LLC, which was 70% owned and controlled by the majority owner, Quest Towing Services, LLC.

In its arbitration demand, the minority alleged that the majority breached its statutory and fiduciary duties, as well as those arising under the corporate governance of the company, including by unfair and illegal self-dealing in violation of MCL 450.4409.

After a multiday hearing, the arbitrator ordered that the company redeem plaintiff's unit-share for \$500,000. The arbitrator premised the award, in part, on the finding that the majority improperly caused the company to perpetrate interested and unfair transactions with their other business. The arbitrator framed the issue as follows:

"[A]pproximately two years into the venture, Quest Towing Services, LLC, without consent of Claimant, started allocating a per call fee to RV Quest, LLC to cover the cost of back-room call-in service. This charge had a dramatic impact on the profitability of RV Quest, LLC since it amounted to hundreds of thousands of dollars per year that were flowing from RV Quest, LLC to Quest Towing Services, LLC and thus little to no profit existed at the end of each year for RV Quest, LLC."

The arbitrator further held that, for this self-dealing to be permissible under the corporate governance, there would have to have been unanimous approval and ratification under the corporate governance by all of the shareholding interests, including the minority partner, but the controlling majority acted unilaterally and in derogation of the operating agreement with these acts of self-dealing, thus triggering remedies under the corporate oppression statute. In pertinent part, the arbitrator held that "this was a unilateral imposition of a fee to an interested party that stripped out a significant portion of the profits of RV Quest, LLC and shifted them to its Majority Member Quest Towing Solutions, LLC."

In ordering a redemption of plaintiff's ownership interest, the arbitrator cited favorably to the decision of *Castle v. Shoham*, 218 Mich. App. LEXIS 2975; 2018 WL 3746550 for its analysis of "the interrelationship between MCL 450.4409 (the interested party transaction statute) and MCL 450.4515 (the minority member oppression statute)[,]" reasoning in part:

"The remedy for the oppressive conduct under the statute is the minority equity interest held by RV Solutions Group, LLC must be redeemed by RV Quest, LLC .... Having established that there was wrongful conduct and that such conduct caused damage, the undersigned is required to assign a value to the damages incurred. In this matter, the undersigned orders that the minority interest of RV Solutions Group, LLC in RV Quest, LLC be redeemed by the company for \$500,000 cash."

All of the counterclaims against the minority owner were dismissed.

On Nov. 16, 2022, the arbitration award was confirmed by the Oakland County Circuit Court, pursuant to motion filed by counsel for RV Solutions Group, LLC.

Mark Rossman, a member of plaintiff's legal team, provided case information.

**Type of action:** Member oppression and fiduciary breach

**Injuries alleged:** Redemption interests — fair value of ownership share

**Name of case:** RV Solutions Group, LLC v. RV Quest, LLC & Quest Towing Services, LLC

**Court/Case no./Date:** Oakland County Circuit Court; 2022-196111-CB; 07/24/2022

**Tried before:** Arbitration

**Name of judge:** Hon. Michael Warren

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

**Arbitration award:** \$500,000

**Most helpful expert:** Thomas A. Frazee

**Attorneys for plaintiff:** Mark Christian Rossman and Taras Garapiak, Troy; David B. Viar, Rochester



ANDREOU



RAMAR

D. Jennifer Andreou, a member of the defendants' legal team, provided case information.

**Type of action:** Medical malpractice

**Injuries alleged:** Death

**Name of case:** Brian Jensen, as PR of the Estate of James Jensen v. Karen Frank, NP and InPatient Consultants

**Court/Case no./Date:** Oakland County Circuit Court; 20-179958-NH; 01/17/2023

**Tried before:** Jury

**Name of judge:** Hon. Martha Anderson

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**Verdict:** No cause of action

**Verdict amount:** \$0

**Most helpful experts:** Anne Zuidema, NP, and Dr. Robert Levin

**Attorneys for defendant:** D. Jennifer Andreou and Eric Ramar, Bloomfield Hills

## Wrongful Death

### Motorcyclist suffered fatal TBI after striking vehicle

#### \$1.25 million settlement



BAKER



TIEDT

The decedent-motorcyclist had the right of way to proceed through an intersection when a motorist attempted to turn left in front of the decedent. The decedent was unable to avoid colliding with the vehicle and suffered a fatal traumatic brain injury.

Even though the motorist was cited for failure to yield the right of way, the case was strongly contested at first based on the lack of insurance on the decedent's motorcycle, allegations that the decedent may have been under the influence and the decedent's weak work

history prior to the crash. Ultimately, however, the case settled pre-litigation for the motorist's full policy limits.

Plaintiff's law firm provided case information.

**Type of action:** Motorcycle vs. car wrongful death crash

**Injuries alleged:** Fatal traumatic brain injury

**Name of case:** Confidential (pre-suit litigation)

**Date:** 12/27/2022

**Settlement amount:** \$1,250,000 (full policy limits)

**Attorneys for plaintiff:** Thomas S. Baker and Jeremy R. Tiedt, Grand Rapids

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## Medical Malpractice

### Nurse practitioner, extended care facility not at fault

#### \$0

The plaintiff alleged that a patient undergoing rehabilitation at an extended care facility began to have episodes of bloody stools which the patient's son allegedly reported to the nursing staff on multiple occasions, although there was no documentation of same.

The plaintiff further alleged that when the complaint of bloody stools was reported to the nurse practitioner there was a delay by her to send to the patient to the hospital for a needed blood transfusion which would have prevented plaintiff from suffering a NSTEMI (a type 2 myocardial infarction) resulting in ischemia which led to his death four months later.

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