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Feature Story

Class Actions

The million-dollar class action verdicts and settlements reported to Lawyers Weekly appear under their own separate heading. Those class actions are listed below.

Class action suit settles for $15M

Share prices were artificially inflated

On Oct. 2, 2002, Comerica announced that it would record a charge to earnings comprised of an increase in the provision for loan loss reserves and a reduction in goodwill related to a decline in the value of Comerica's California subsidiary, Munder Capital Management. The company also disclosed a restatement of its financial results for the second quarter of 2002 to reflect additional loan loss reserves relating to Munder.

In their complaint, the plaintiffs alleged that Comerica issued public statements that were materially false and misleading in violation of Sections 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. Specifically, the plaintiffs alleged that the defendants issued materially false and misleading quarterly reports with the Securities and Exchange Commission that failed to properly disclose the poor financial condition of Comerica's loan portfolio regarding loans in the bank's California subsidiary, Munder Capital, that did not satisfy generally accepted account principles. The complaint alleged that these statements caused Comerica's share price to be inflated artificially, causing damages to persons who purchased or acquired Comerica's common stock at such inflated prices.

The parties agreed to settle the case for $15 million.

Type of action: Securities fraud class action

Type of injuries: Fraudulent representations in connection with SEC Quarterly filings

Name of case: Kasner v. Comerica, Inc.

Court/case no./date: U.S. District Court for the Eastern District of Michigan; #02-60233; Nov. 29, 2005

Name of judge: Marianne O. Battani

Settlement amount: $15 million

Attorneys for the plaintiff: E. Powell Miller; Marc L. Newman; Barry A. Weprin

Attorney for the defendant: Withheld

$12.75M facilitation for sewage invasion

Governmental immunity didn't bar claims

On Sept. 11, 2000, thousands of homes in Allen Park, Dearborn Heights, Ecorse, Inkster, Lincoln Park, Southgate, Taylor, Wyandotte and River Rouge were flooded with untreated sewage, which caused damage to personal and real property.

The plaintiffs filed several class actions against the above municipalities as well as Wayne County, alleging that the defendants' operation of the downriver sewer system was responsible for their damages.

The actions were removed to federal court, where a certified question was submitted to the Michigan Supreme Court on the issue of whether governmental immunity barred the plaintiffs' claims.

Although the Michigan Supreme Court had ruled for more than 161 years that the common law allowed a claim of damages arising from the invasion of private property by a governmental entity, the defendants argued that there was no statutory authority for the plaintiffs' claims.

Plaintiffs' counsel retained a lobbyist and coordinated a grass roots campaign that led to the enactment of Public Act 222, which provides that there is no automatic immunity for a claim arising from a sewage invasion.

On April 2, 2002, the Michigan Supreme Court, in Pohutski, et al. v. City of Allen Park, Lawyers Weekly No. 44937, ruled there was no common law exception to governmental immunity for a claim of sewage invasion but, due to previous authority and the recent enactment of Public Act 222, applied its holding on only a prospective basis.

After the ruling in Pohutski, the defendant argued the plaintiffs could not prove their damages were proximately caused by the defendants and that the plaintiffs' damages were caused by an Act of God in the form of a lightning strike or significant rain.

The plaintiffs responded by retaining several engineers who detailed numerous defects in the defendants' operation of the downriver sewer system. Demonstration of proximate cause was difficult due to the widespread nature of the flooding and the complexity of the downriver sewer system, which is comprised of thousands of miles of sewer lines, numerous pump houses and a waste water treatment plant.

Once the parties had submitted their experts' reports, the parties agreed to facilitation conducted by Eugene Driker. Facilitation lasted one and one-half years, ending with the more than 50 parties agreeing to a settlement which required the defendants to pay $12.75 million in damages.

Type of action: Class action for damages arising from a sewer backup

Type of injuries: Property loss

Name of case: Lessard, et al. v. Wayne County, et al.

Court/case no./date: U.S. District Court, Eastern District, Southern Division; #00-74306; April 5, 2005

Name of judge: John Feikens

Settlement amount: $12.75 million

Attorneys for the plaintiff: Steven D. Liddle, Peter W. Macuga and David R. Dubin

Attorney for the defendant: Withheld

Name/city of most helpful experts: Noel LaPorte, lobbyist, Lansing

Class action vs. chemical co. nets $1.2M

Key: Convincing defendant evacuation is compensable

This was an environmental class action lawsuit. Defendant ATOFINA Chemicals, Inc., released chlorine and methyl mercaptan during an explosion that caused the one-day emergency evacuation of approximately 2,000 residents of Grosse Isle, Riverview and Wyandotte.

The plaintiffs successfully sought evacuation damages in the form of compensation for mental distress and for loss of use of their homes.

Plaintiffs' counsel noted the key to winning was convincing the defendant that an emergency evacuation is compensable.

Type of action: Environmental tort

Type of injuries: Evacuation

Name of case: Snow, et al. v. ATOFINA Chemicals, Inc.

Court/case no./date: U.S. District Court, Eastern District; #01-72648; Feb. 23, 2005

Name of judge: Victoria Roberts

Settlement amount: $1.2 million

Attorneys for the plaintiff: Jason Thompson and Steve Liddle

Attorney for the defendant: Withheld

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