REPORTER'S NOTEBOOK

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Chad Halcom

Park West art case on appeal

One of metro Detroit's higher-profile lawsuits in 2010 is languishing in the undecided category.

The **6th U.S. Circuit Court of Appeals** in Cincinnati agreed last week to hear an appeal that could reinstate the April 21 jury verdict against Southfield-based **Park West Galleries Inc.** in favor of **Global Fine Art Registry LLC** and its CEO.

U.S. District Judge Lawrence Zatkoff scrapped the jury's $500,000 award against Park West in August and ordered a new trial that month but later agreed to put the case on hold until an appeal is heard.

The Southfield art dealer sought $46 million in damages against Fine Art Registry, CEO Teresa Franks and a contract writer for the registry in a 2008 lawsuit stemming from reports the registry published online about art auctions that the **Park West at Sea** subsidiary manages aboard cruise ships.

"It's essentially back in the pretrial phase (of the lawsuit) right now," said Rodger Young, partner at Southfield-based **Young & Susser PC** and lead attorney for Park West. "Because unless the (appeals) court changes the status of the case, it's as if the first trial never happened at all."

The higher court will consider whether Park West waived its right to seek a new trial while the original six-week trial was pending. The company objected several times in court when references came up to matters that Zatkoff had deemed inadmissible.

But the company did not seek a mistrial before the case was submitted to the jury.

"The (new) case law says you can't wait for the jury verdict and then move for a mistrial. You can't bet on the verdict going your way and then if you lose, turn to the court (judge)," said Donald Payton, partner at Farmington Hills-based **Kaufman Payton & Chapa PC** and attorney for the registry.

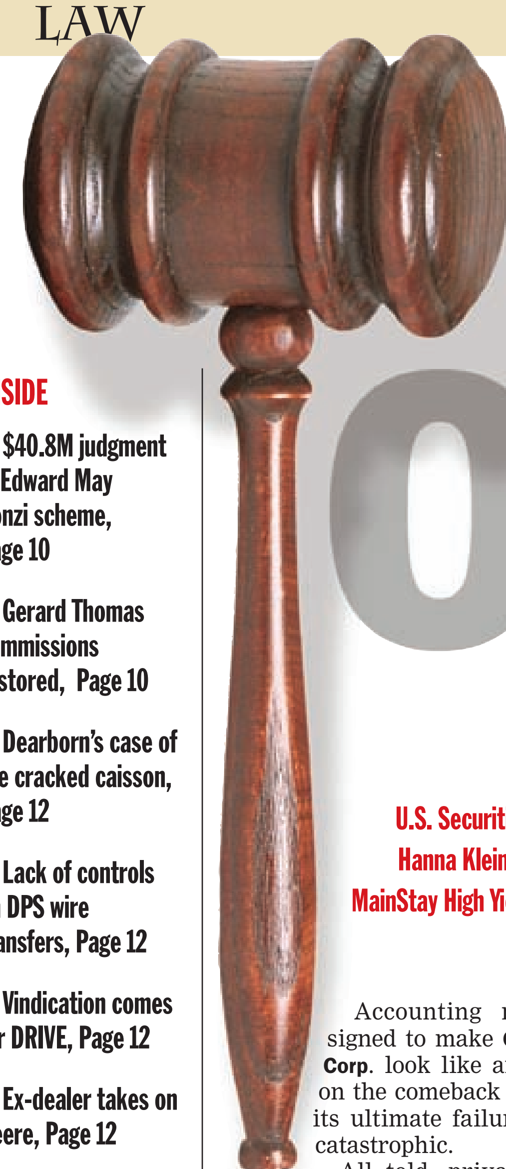
Attorneys are also awaiting ruling from the **Michigan Court of Appeals** in 2008 buyer lawsuits against Park West in **Oakland County Circuit Court**. Oral arguments are expected March 13 on a request to dismiss an expert on artist Salvador Dali as a defendant.

A separate buyers' lawsuit, filed in 2010, awaits a response from Park West to several amended complaints on behalf of more than a dozen buyers in late January. Payton said a third lawsuit could be in the offing soon.

"I think we've got another 10-12 plaintiff (buyers) that have come to us since (the 2010 case) that we think will be the basis for a new lawsuit," he said. "If it turns out they're right that they bought from Park West, and there's truly a claim of any works being inauthentic, then we'll sue on their behalf, too."

Focus

LAW



The big cases of 2010 for metro Detroit attorneys ranged from accounting scandals and inventory practices to cases over faulty construction materials and patent protection.

There were fewer big-dollar verdicts than in previous years but a number of long-running disputes — like **Collins & Aikman's** SEC case (below) and the Charles Conaway/**Kmart Corp.** case (Page 13).

This selection of large verdicts and settlements is the result of legal reporter Chad Halcom's efforts combing through lawsuits and submissions from law firms and case parties. Profiles begin on this page and continue through Page 14.

Top verdicts and settlements

The biggest cases of 2010

INSIDE

WEB EXTRA

■ **Summaries:** From medical malpractice to breaches of contract and non-local cases with Detroit legal representation, 12 more cases of note, **crainsdetroit .com/focus**

U.S. Securities and Exchange Commission v. Collins & Aikman Corp. et al

Hanna Kleinpeter-Fleck, KJ Egleston et al v. Collins & Aikman Corp. et al

MainStay High Yield Corporate Bond Fund v. Heartland Industrial Partners LP et al

Securities fraud

Accounting maneuvers designed to make **Collins & Aikman Corp**. look like an auto supplier on the comeback trail only made its ultimate failure all the more catastrophic.

All told, private equity fund **Heartland Industrial Partners LP**, several of Collins' top executives and a key supplier who sat on Collins' board will pay $27.6 million to shareholders, bondholders and the **U.S. Securities and Exchange Commission** because of the accounting practices.

The Collins settlements and judgments in 2010 stemmed from supplier transactions that inflated the company's operating income between late 2001 and mid-2004. Collins fired CEO and former Reagan White House budget director David Stockman in May 2005 after an internal probe and then filed for bankruptcy days later. A criminal case against him was later dismissed.

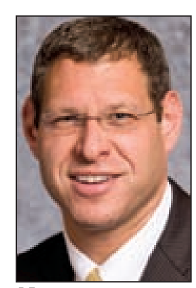
Stockman

It all began a few months after Heartland became majority owner of Collins, investing more than $360 million in the Troy-based maker of automotive plastic and fabric interior components.

Federal officials allege Stockman helped orchestrate about $14.8 million worth of "round trip" transactions with Elkin McCallum, former CEO of **Joan Fabrics Corp.**, who sat on Collins' board of directors. These included rebates of overpayments to buy businesses that McCallum or Joan Fabrics owned, or loans that were later repaid to McCallum.

The rebates and loan payments were counted either as income or reduction in operating costs on SEC earnings reports. The company also allegedly used at least 132 supplier transactions or rebates that inflated Collins' operating income by a combined $43.6 million by mid-2004.

Miller



Newman

Collins secured $415 million in senior subordinated notes from bondholders to refinance its debt in 2004 and early 2005, and a class of investors who bought the notes alleged in a 2007 lawsuit that they were misled by falsified earnings reports.

A group of stockholders brought a class-action lawsuit after the company in 2005 announced it had begun an internal probe into prematurely or improperly reported supplier rebates. The announcement sent the company's stock price plummeting; weeks later, Collins filed for bankruptcy and was liquidated in 2007.

The SEC brought a third action alleging fraudulent practices and violations of the Exchange Act and Securities Act.

In April 2010, Stockman agreed to pay $7.2 million to resolve all three court cases — $2.2 million each to settle the stockholder and note-holder class actions, and another $2.8 million in the SEC case.

McCallum agreed to pay $100,000 to resolve the **MacKay Shields** note-holder class action, and was fined $75,000 by the SEC. Former company CFO J. Michael Stepp also was fined $75,000 by the SEC and settled both investor class actions for $125,000.

David Cosgrove, vice president of financial planning and analysis and con-

See Securities, Page 10

■ **Venue**: U.S. District Court, Detroit, Chief Judge Gerald Rosen (investor class actions); U.S. District Court, New York, Judge Shira Scheindlin (SEC case)

■ **Cases filed**: April 13, 2005, Feb. 5, 2007, and March 26, 2007

■ **Total payout**: $27.6 million, June 10, 2010

■ **Plaintiff**: **U.S. Securities and Exchange Commission**, **MainStay High Yield Corporate Bond Fund** and other bondholders who acquired at least $153 million in notes from **Collins & Aikman Corp.** through investment adviser **MacKay Shields LLC**, **KJ Egleston** and other investors who bought Collins & Aikman stock or notes between 2002 and 2005.

■ **Lead counsel**: **Thomas Burt**, partner, **Wolf Haldenstein Adler Freeman & Herz LLP**, New York; and **Max Berger** and **Steven Singer**, partners, **Bernstein Litowitz Berger & Grossman LLP**, New York (for the investors); co-counsel: **E. Powell Miller** and **Marc Newman**, partners, **The Miller Law Firm PC**, Rochester; **H. Michael Semler**, SEC counsel.

■ **Defendants**: **Collins & Aikman Corp.**, **Heartland Industrial Partners LP**, CEO **David Stockman**, CFO **J. Michael Stepp**, board member and former **Joan Fabrics Corp.** CEO **Elkin McCallum**, Collins COO **Gerald Jones**, vice president of financial planning and corporate controller **David Cosgrove**, purchasing department executive **Paul Barnaba**, and several Collins board members.

■ **Lead counsel**: **Jonathan Lerner** and **Lea Haber Kuck**, partners, **Skadden, Arps, Slate, Meagher & Flom LLP**, New York; co-counsel: **Thomas McNeill**, member, **Dickinson Wright PLLC**, Detroit, and **Andrew Weissman**, partner, **WilmerHale LLP**, Washington.

Securities: Fraud case

■ *From Page 9*

troller, was fined $40,000 by the SEC, and purchasing department executive Paul Barnaba agreed to pay a judgment of $20,000.

Heartland agreed to pay $20 million to settle the two class actions. Thomas Burt, partner at New York-based **Wolf, Haldendstein, Adler, Freeman & Herz LLP** and attorney in the stockholder class action, said Heartland recently paid off its $11 million note, and attorneys expect to enter an order soon to allow settlement funds to be disbursed.

"It's hard to quantify how short you come," he said. "The company went into the ground in a liquidated bankruptcy and you never get every cent on the dollar when the company folds.

"But when you take out what fractions a company can pay and what its insurers pay, then you're left to whatever could be collected from third parties. We were afraid we would inherit a goose egg, but we did manage to collect an eight-figure sum, and that is going to be distributed."

— *Chad Halcom*