



THE MILLER LAW FIRM
A PROFESSIONAL CORPORATION

Ex-officer claims terms of buyout altered, buy-sell provision removed \$1 million

Defendant/counter-plaintiff Randy Fosgard was an officer, director and 19 percent shareholder of plaintiff/counter-defendant Michigan Mutual, Inc., dating back to 1994. In late December 2006, Fosgard notified his fellow shareholders of his resignation from the company. Under the then-existing shareholder agreement, Fosgard was entitled to a buyout of his shares at the last stipulated stock price set in July 2006.

Two weeks after Fosgard issued his resignation notice, the controlling shareholders and directors secretly executed a consent resolution that purported to substantially reduce the stipulated share price and remove the mandatory buy-sell provision from the shareholder agreement. The company filed a declaratory complaint against Fosgard, requesting a ruling that the current resolution was valid and that the company had no obligation to purchase Fosgard's shares.

Fosgard filed a counter-complaint alleging shareholder oppression, breach of fiduciary duties and breach of contract. After the close of discovery, the parties filed cross-motions for summary disposition. Before the court ruled on the dispositive motions, the parties accepted the case evaluation award of \$1 million in favor of Fosgard.

Type of action: Shareholder oppression, breach of contract, breach of fiduciary duties Name of case: Michigan Mutual, Inc., et et., v. at al. Court/Case no./Date: Oakland County Circuit Court; 0&081339-CK; 27,2008 Name of judge: Mark A. Goldsmith amount: \$1 million Attorney for plaintiff/counterdefendant: Withheld Attorneys for defendant/counterplaintiff: Brian E. Etzel, David H. Fink