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2003 MILLION-DOLLAR VERDICTS & SETTLEMENTS

BY DENISE G. CALLAHAN

With everyone touting tort reform these days, it appears perhaps that the public has taken matters into its own hands.

There were dramatically fewer million-dollar-plus verdicts reported in 2003 than in any of the past five years, but the total dollar amount awarded — \$94 million — in the top 10 cases was the third highest since 1999.

Last year, juries returned a whopping 21 seven- or eight-figure verdicts for a total of \$123.2 million, up substantially from the 2001 showing of 14 verdicts tallying \$100.9 million.

The case totals for 2000 and 1999 also rounded out at 21, with verdict tabs of \$87.7 million and \$91.5 million respectively.

The usual subject matter suspects like wrongful death and med-mal were on the 2003 hit parade, but there were actually a larger number of what might be deemed unusual wins this year. More than half were for suits over breach of contract, fraud, con-

demnation and employment discrimination.

This year, the top dog verdict actually had the U.S. District Court in Grand Rapids buzzing when the \$30 million verdict was handed down in the Taco Bell talking dog breach of contract case.

10 – Michigan Dep't of Transportation v. Elsey

Lee Elsey got exactly what he asked for in a \$1.8 million condemnation suit against the Michigan Department of Transportation.

The highway department needed 10 acres of Elsey's land for its M-5/Haggerty Road connector. The taking drove right down the middle of Elsey's 20-acre parcel, leaving him with two lots on dead-end roads.

It was a pretty straightforward case, said Elsey's attorney, Jerome Pesick of Southfield. It all came down to whose appraiser was more believable.

"The jury was fairly savvy and I think they were offended by the fact that MDOT

This special section includes verdicts and settlements of \$1 million or more obtained in 2003 which were reported to Michigan Lawyers Weekly and verified before Jan. 2, 2004.

Many of the reports were published in the "Verdicts & Settlements" section of the newspaper throughout 2003. Meanwhile, other reports appear in this special section for the first time.

took a 20-acre lot and ran a road right through the heart of it," he said. "Now the land is divided by a limited access highway that is almost like an expressway. Our property is now separated into two five-acre parcels on dead-end streets. The pictures tell a lot."

While he was confident with his case, Pesick was pleasantly surprised with the jury's verdict.

"I felt we'd do well, but you're always mildly surprised when you get every dime you asked for from the jury," he noted.

10. Condemnation Matter Results In \$1.8M Verdict *Jury Awards More Than Double Defense's Request*

Defendant Elsey owned two adjacent 10-acre properties in Commerce Township that were zoned for light industrial use. MDOT took 10 acres from the middle of the two properties for its M-5 Haggerty Connector, leaving Elsey with an awkwardly shaped remainder on a dead-end road on each side of M-5.

MDOT's opinion was that the property was worth \$1.75 per square foot before the taking, and that the taking did not damage the per square foot value of the properties after the taking. It therefore offered a total of \$773,800 as just compensation for the taking from both properties.

Elsey's opinion, meanwhile, was that the properties were worth \$3 per square foot before the taking, and that the taking damaged the remaining properties in several ways,

leaving them with a lower value after the taking. He therefore requested \$1.777 million as compensation.

Elsey hired Gerald Anderson and Mary Jane Anderson of Anderson & Anderson Associates, Inc., to appraise the properties, and to testify at trial.

The jury awarded Elsey all the compensation he requested. It awarded him more than \$1 million more than MDOT offered, for a total of \$1.8 million as just compensation for the taking from both properties.

According to defense counsel, the key to winning was explaining to the jury that MDOT had placed a low valuation on the properties before the taking, and the MDOT refused to recognize the damage that the taking imposed on the portions of the properties that were not taken.

Type of action: Condemnation

Type of injuries: Taking of approximately 10 acres of land, plus damage to remaining land caused by the taking

Name of case: Michigan Department of Transportation v. Lee L. Elsey et. al

Court/case no./date: Oakland County Circuit Court; # 00-021771-CC and #00-021772-CC; Aug. 5, 2003

Name of judge: Fred Mester

Verdict amount: \$1.777 million

Attorney for the plaintiff: Withheld

Attorneys for the defendant: Jerome P. Pesick, H. Adam Cohen and Jason C. Long

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