

REPORTER'S NOTEBOOK



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Chad Halcom

Investor slices settlement pie

One of the largest court judgments of last year was the offspring of another standout court case from a past year — but eight women who were part of a \$100 million settlement in 2009 are now expected to turn over much of their share to an investor.

New York-based **Money for Lawsuits V LP**, a company that invests in lawsuits by buying a stake in plaintiffs' prospective winnings while the litigation is pending, obtained a combined \$4.2 million in judgments by late last year against eight women who prevailed against the **Michigan Department of Corrections** and several administrators over assaults on and mistreatment of women prisoners.

More than 500 women are sharing structured payments totaling \$100 million through October 2014 to settle the class action lawsuit on behalf of women who were victims of sexual assault, harassment or privacy rights violations by prison staff between March 1993 and July 2009. Most were at the shuttered Robert Scott Correctional Facility in Plymouth or at Western Wayne Correctional Facility in Plymouth Township.

Money for Lawsuits, also known as **MFL Casefunding**, made combined payments of about \$865,000 to the women between February and June 2009, before the settlement that July. The company makes contingent purchase agreements with plaintiffs who need money in advance of anticipated winnings.

David Plunkett, attorney for Money for Lawsuits and partner at Birmingham-based **Williams, Williams Rattner & Plunkett PC**, said the investor companies assume risk in making the purchases. If the women did not win or their judgments didn't survive appeal, the investor gets no return. But prevail they did, and the lawsuit alleges all eight failed to inform the investor. Ralph Sirlin, an attorney for the women at Pleasant Ridge-based **Reosti & Sirlin PC**, said the women took payments of around \$50,000 to slightly more than \$100,000 each. But the agreements call for the company to be repaid from winnings when the case is over, with fees and interest of 4.25 percent compounded per month or nearly 90 percent annualized, Sirlin said. Judge Mark Goldsmith of U.S. District Court in Detroit imposed individual judgments ranging from \$284,145 to \$812,572, for a combined \$4.23 million.

"We believe these purchases are usury under Michigan law. But the contracts contain a provision that requires them to be read and interpreted under New York law, which doesn't see them as usurious," he said. "When you get out of prison it isn't like you have a lot, and most of them were taking out living money." Sirlin said the rate of return on MFL's investment essentially consumes the women's share of the settlement. The case is now before the 6th U.S. Circuit Court of Appeals in Cincinnati.

FOCUS

LAW

Big cases of 2012

Top verdicts and settlements, from price fixing to asset disputes

Each year, *Crain's Detroit Business* combs its archives and talks to law firms and other sources to compile a review of some of the biggest cases. The cases range from automotive

supply chain price-fixing (see Page 1) to "cyber squatting" and medical malpractice.

Stories begin on this page and continue through Page 15.

Homeowners insurance

RONALD CARTER, JOSE JIMENEZ ET AL V. ALLSTATE INSURANCE CO., ALLSTATE INDEMNITY CO.

- **Venue:** U.S. District Court, Detroit, Judge Stephen Murphy; Cook County Circuit Court, Chicago, Judge Kathleen Pantle
- **Cases filed:** Sept. 3, 2002, in Chicago; Oct. 22, 2007, in Detroit
- **Settlement:** More than \$25 million (estimated, including attorney fees)
- **Date:** Sept. 13, 2012
- **Plaintiffs:** Ronald Carter and Jose Jimenez, Detroit property owners, for a class of holders of Allstate residential fire or landlord policies, who claimed a loss on homes in any of 38

CASE FILE

Home Depot cards: Dispute over sales taxes. **Page 12**

Kilpatrick contractor: \$4.5 million settles part of water department suit. **Page 12**

Adell trust: \$3.25 million settles pending suits, dissolves trust. **Page 12**

Shareholder dispute: \$13 million settles suit against steel company execs. **Page 13**

Insurance benefits: State Farm sued over payments. **Page 13**

Jailhouse birth: Suit says pregnant inmate ignored. **Page 14**

Car facts: Deal over Dodge deliveries sours. **Page 14**

Right of way: Bus crash brings lawsuit. **Page 14**

Way with words: Assistant attorney general liable for defamation. **Page 15**

Cyber squatting: Bad-faith use of domain name. **Page 15**

Home strife: Mobile home community co-owners battle. **Page 15**

■ **Lead counsel:** Mark Hanover, partner, Sonnenschein Nath & Rosenthal, Chicago

■ **Co-counsel:** Harold Pope III, shareholder, Jaffe, Raitt, Heuer & Weiss PC, Southfield; Anne Mitchell, partner, Rooney Rippie & Ratnaswamy, Chicago

About the case

More than 10,000 insured residential property owners in 38 states could get a combined payout of at least \$22.5 million by late spring after attorneys for **Allstate Insurance Co.** settled with a policyholder class represented by two Detroit landlords.

Ronald Carter of Detroit and Jose Jimenez of Southfield owned homes in Detroit that were destroyed by fire in 2001 and 2006, respectively. Each had insurance that covered a replacement cost for the rental homes minus depreciation, but they allege Allstate offered a payment based on "market value" — or \$35,000 and \$48,000, respectively, where each sought more than \$100,000.

Carter sued in Cook County, Ill., where Allstate is based, and Jimenez at U.S. District Court in Detroit several years later. Both cases were filed as potential class actions, and the company reached an agreement last summer that certified a class and settled both cases at once.

The property owners contended Allstate engaged in a practice for years of substituting "actual cash value" on some policies with market value when paying claims. Allstate, which admits no wrongdoing in the settlement, had cited a "broad evidence rule" in court to contend actual cash value can be calculated on various forms of evidence, including market value.

The settlement calls for policyholders to get new payments, ranging from a 2.5 percent bump in the original claim payment for some, to as much as 20 percent of the differential between that payment and the policy limit (or the home replacement cost less depreciation) for others.

The settlement also calls for a separate payment of \$5.5 million in attorney fees to Jason Thompson, shareholder at Southfield-based **Sommers Schwartz PC**, to distribute among three law firms that represented the plaintiff class.

Sommers Schwartz, in a statement late last year, said the settlement covers more than 13,000 Allstate policyholders who sustained covered losses, and it believes their payout will exceed \$22.5 million.

Lance Young, a partner at Sommers Schwartz, said many of the smaller claims are paid and larger payments could be distributed starting in March.

— Chad Halcom



Focus: Law

Defamation via blog

CHRIS ARMSTRONG V. ANDREW SHIRVELL

■ **Venue:** U.S. District Court, Detroit, Judge Arthur Tarnow
 ■ **Case filed:** April 1, 2011, Washtenaw County Circuit Court. Removed to U.S. District Court on May 31, 2011.

■ **Verdict:** \$4.5 million

■ **Date:** Aug. 16, 2012

■ **Plaintiffs:**

Chris Armstrong, former president, Michigan Student Assembly at the University of Michigan. Graduated in 2011.

■ **Lead counsel:**

Deborah Gordon, managing member, Law Offices of Deborah L. Gordon PLC, Bloomfield Hills

■ **Defendants:** Andrew Shirvell, former assistant attorney general under Michael Cox, who fired him in November 2010. Now living on Long Island, N.Y.

■ **Lead counsel:** Represented self at trial.

■ **Co-counsel:** **Robert Fleming**, Robert G. Fleming Attorney At Law, Williamston



Gordon

About the case

Jurors took about one full day in August to find Andrew Shirvell, formerly an assistant state attorney general who had launched the anonymous "Chris Armstrong Watch" blog beginning in April 2010, liable for defamation, stalking and intentional infliction of emotional distress.

Christopher Armstrong, a gay **University of Michigan** student and president of the Michigan Student Assembly in 2010-11, drew attention from Shirvell, a UM alumnus who went on to graduate from the **Ave Maria School of Law**.

Shirvell first formed a Facebook page about Armstrong that was later deactivated, and then launched a blog accusing Armstrong among other things of being a "viciously militant homosexual activist," hosting an orgy in his dorm room in 2009, hosting a "gay rush party" at his home in 2010 to "liquor up underage freshmen and promote homosexual activity," and of "openly mocking Christians" at UM.

Then-Attorney General Mike Cox fired Shirvell in November 2010 after the blog gathered widespread media attention. Shirvell has said he viewed his blog as a movement to get Armstrong to resign as student body president, and that he was acting within his First Amendment rights.

He also countersued Armstrong in January 2012, claiming Armstrong's actions caused him to lose his job.

Shirvell, in an email, said he plans to appeal the "absurd" \$4.5 million judgment, but cannot file a notice of appeal until Tarnow makes a ruling on some motions he has filed. He has also brought a civil lawsuit for defamation and false light against Gordon, which awaits a pretrial hearing this week.

— Chad Halcom

Domain name dispute

WEATHER UNDERGROUND INC. V. NAVIGATION CATALYST SYSTEMS INC. ET AL

■ **Venue:** U.S. District Court, Detroit, Judge Marianne Battani

■ **Case filed:** Feb. 27, 2012

■ **Judgment:** \$3.5 million

■ **Date:** Sept. 15, 2012

■ **Plaintiff:** Weather Underground Inc., Ann Arbor

■ **Lead counsel:** **Enrico Schaefer**, partner, Traverse Legal PC, Traverse City

■ **Co-counsel:** **Brian Hall**, partner, Traverse Legal PC; **Anthony Patti**, partner, Hooper Hathaway PC, Ann Arbor

■ **Defendants:** Navigation Catalyst Systems Inc., El Segundo, Calif.; Basic Fusion Inc., El Segundo (dismissed Nov. 13, 2009); First Look Inc., El Segundo (dismissed Nov. 13, 2009); and Connexus Corp., El Segundo (dismissed Nov. 13, 2009); Epic Media Group Inc., Los Angeles

■ **Lead counsel:** **William Delgado**, partner, Willenken Wilson Loh & Delgado, Los Angeles

■ **Co-counsel:** **Nicholas Stasevich**, partner, Butzel Long PC, Detroit



Schaefer

About the case

Ann Arbor-based **Weather Underground Inc.**'s \$3.5 million jury award stems from "cyber squatting" — the bad-faith use of a domain name with the intent to profit.

On Aug. 18, 2008, Weather Under-

ground filed a complaint against El Segundo, Calif.-based **Navigation Catalyst Systems Inc.** and the other defendants with the **National Arbitration Forum** regarding the company's use of 41 misspelled Weather Underground domain names.

An arbitrator ordered the company to transfer the domains to the Weather Underground. However, in due diligence, many more infringements were discovered and Weather Underground's attorneys filed suit in 2012.

In all, Navigation Catalyst registered and used 264 domain names such as qwunderground.com, udergroundweather.com and winderground.com. Weather Underground's actual trademarked sites include wunderground.com, weatherunderground.com and wund.com.

Navigation Catalyst and its co-defendants denied the charges on the grounds that automated software had registered the domain names and therefore had no intent, its lawyers argued in court.

Navigation Catalyst, a shell company created by **Connexus Corp.**, has a history of cyber squatting accusations. **Verizon Wireless** settled a similar suit against Navigation Catalyst in 2008.

WU was founded in 1995 by Jeff Masters while working on his doctorate at **University of Michigan**. It achieved almost cult-like status among weather purists for its data-based approach and now averages about 10 million unique visitors per month. It was bought by **The Weather Channel** in July.

— Dustin Walsh

Mobile home park assets

NORTHVILLE CROSSING VENTURE LLC AND SALEM LAND ASSOCIATES LP VS. KM EIGHT MILE GROUP INC.

■ **Venue:** Oakland County Circuit Court, Judge Martha Anderson

■ **Case filed:** April 18, 2011

■ **Settlement:** \$4.97 million

■ **Date:** July 12, 2012

■ **Plaintiffs:** Northville Crossing Venture LLC, Northville; Salem Land Associates LP, Bloomfield Hills

■ **Lead counsel:** **Richard Rassel**, partner, Williams, Williams, Rattner & Plunkett PC, Birmingham

■ **Defendants:** KM Eight Mile Group, Farmington Hills

■ **Lead counsel:** **David Mendelson** of David Mendelson PC, Birmingham



Rassel

About the case

Bloomfield Hills-based **Salem Land Associates LP**, one of two co-owners of a mobile home community in Washtenaw County's Salem Township, filed suit in 2011 against the other owner, Farmington Hills-based **KM Eight Mile Group**, claiming it had improperly diverted the community's assets.

Salem and KM each owned 50 percent of the **Northville Crossing** mobile home development. Salem contributed the land, valued at \$4 million, and KM provided \$2 million in capital to launch the community.

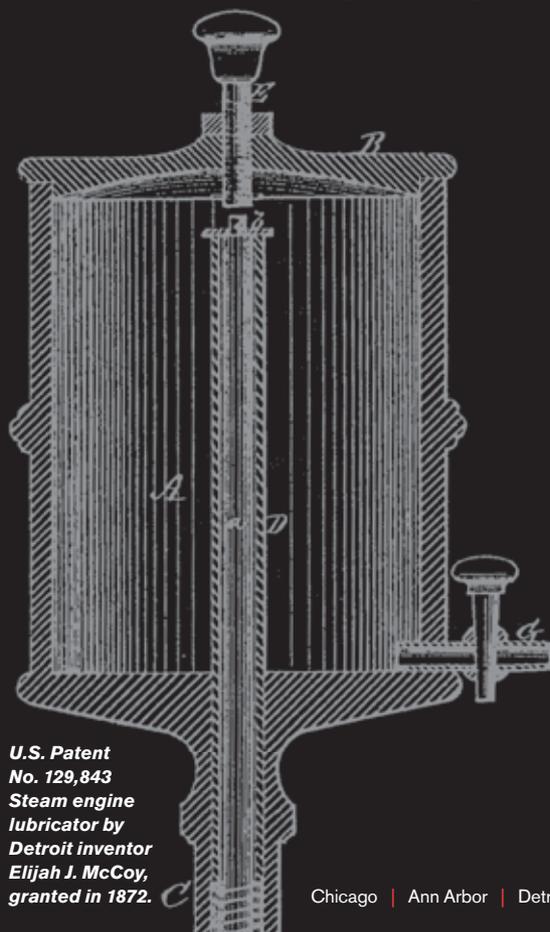
Salem, through Northville Crossing, filed suit in Oakland County Circuit Court alleging that KM engaged in unauthorized transactions that improperly diverted Northville Crossing's assets.

The case ultimately went into mediation and facilitation. The facilitator agreed to by the court was John Schaefer.

Salem agreed to sell its half of Northville Crossing for \$4.97 million to KM, and the case was dismissed July 12.

— Carl Bookstein

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U.S. Patent No. 129,843
 Steam engine lubricator by Detroit inventor Elijah J. McCoy, granted in 1872.

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