

VERDICTS & SETTLEMENTS

Business partners breach contractual obligations

Type of action: Contract

Injuries alleged: Monetary damages

Name of case: Ophnet, Inc., et al. v. Lamensdorf, M.D., PC, et al.

Court/case #: Essex Superior Court, No. ESCV2002-00419

Tried before judge or jury: Jury

Name of judge: Richard E. Welch III

Special damages: Compensatory and punitive damages

Amount of verdict: \$1.77 million

Date: Sept. 29, 2006

Demand: \$1.2 million

Highest offer: Counter-demand of \$1.2 million

Most helpful expert: Thomas A. Quin, CPA, Norwood

Attorneys: Christopher R. O'Hara and Edward F. Foye, Todd & Weld, Boston (for the plaintiff)

Jury: attempts were made to reduce plaintiffs' portion of incentive payments

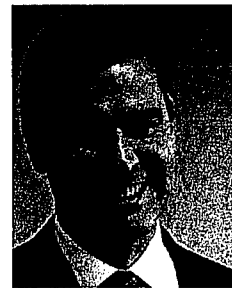
\$1.77 million verdict

The plaintiffs were ophthalmology practice consultants who agreed in 1995 to manage a Florida physician's practice in return for, among other things, a steeply discounted hourly consulting fee and a percentage of the practice's profits.

In the course of the business relationship, the parties also agreed to construct and operate an ambulatory surgery center.

During the seven-year period that the plaintiffs provided consulting services to the medical practice, practice revenues more than doubled and the physician's income nearly tripled. When the business relationship between the parties ended in 2002, claims and counterclaims by the parties began to surface.

After a three-week trial in Essex Superior Court in Newburyport, involving, among other things, claims for breach of contract, fraud and breach of fiduciary duty, a jury found that various defendants breached contractual and common law obligations. The jury determined that those defendants at-



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Foye

tempted to reduce the plaintiffs' portion of incentive payments by falsely understating profits and that certain defendants failed to make required capital contributions to the ambulatory surgery center.

The jury returned a verdict for the plaintiffs on their contract claims of \$1.082 million; compensatory fraud damages of \$125,000 (which the court considered duplicative of a portion of the contract damages); punitive fraud damages under Florida law of \$100,000; compensatory breach of fiduciary damages relating to the surgery center of \$191,000; and punitive fiduciary breach damages of \$400,000 — for a total jury award in plaintiffs' favor of \$1.77 million (\$2.45 million with interest).

The jury valued the defendants' redemption interest in the ambulatory surgery center at only \$200,000.