

LAWSUIT | Damages could become largest legal malpractice verdict in the state

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and plastic packaging, has made about \$2.5 billion from the deal Shane negotiated, including \$608 million last year alone, according to court records.

If Shane prevails and gets the damages he's seeking, it would dwarf the largest verdict ever returned in a legal malpractice case in Kentucky, which was \$5.1 million, according to the Kentucky Trial Court Review, a publication for lawyers and insurers.

Outside lawyers for Frost Brown Todd didn't respond Monday to requests for comment. The firm's chairman, John R. Crockett III, said it would be inappropriate to comment during trial.

Shane's current lawyer, William McMurry, said that neither he nor his client, who lives in Livingston County, could comment until after the end of the trial.

Judgment errors are key

In court papers, the law firm has offered several explanations for its failure to mention the oral contract before it was too late to include in Shane's suit.

For starters, the firm said the case couldn't have been won based on that contract.

But McMurry said that citing that deal was the only way Shane could have prevailed — and he said he has found smoking guns to

support that allegation, including an internal law firm document in which one of Frost Brown Todd's lawyers acknowledged the firm "screwed up."

Shane, 62, also has an affidavit from Bunzl's former chairman, Paul Lorenzini, who confirmed in the handshake agreement to give Shane commissions for as long as the company did business with Wal-Mart.

Frost Brown Todd, however, said Lorenzini had been fired by then and hated the company because of it.

Both sides have argued in court papers that the suit turns on whether lawyers can be held accountable for errors of judgment.

Frost Brown Todd, which has 450 lawyers in 11 offices in five states, contends the fact that a court rules against a position taken by a lawyer doesn't mean he was necessarily negligent, or even wrong.

But McMurry has noted that the Kentucky Supreme Court has specifically rejected an "attorney-judgment" exception for malpractice cases.

McMurry said lawyers should not be protected in ways that doctors and other professionals are not.

University of Kentucky law professor William Fortune said lawyers can make judgment mistakes that are "clearly unreasonable" and should be punished.

But he added that there is often more than one strategy to try a case and that it's easy to "look at it after the fact" and decide the attorneys should have done something differently.

Handshake deal

The events leading to the dispute began in Bentonville, Ark., on Sept. 30, 1993, when Shane said he asked Lorenzini whether he would receive a commission for getting Wal-Mart's business for as long as the retailer did business with Bunzl.

"(Lorenzini) said, 'Absolutely,'" Shane said in court pleadings. "I shook his hand."

The commission amount was about 1 percent, depending on the profit margin of the item sold, according to court records.

Bunzl paid Shane as promised until 2000 but then reduced his cut. Shane sued for breach of contract, as well as on other grounds, and Bunzl terminated the deal in 2001.

In its original suit against Bunzl, Frost Brown Todd didn't mention the oral contract but instead cited what it dubbed a "letter agreement" authored by Bunzl in 1995.

The written agreement didn't mention anything about the contract continuing as long as Bunzl and Wal-Mart did business.

U.S. District Judge

Charles R. Simpson III dismissed the breach of contract claim, saying it failed to specify how the contract was breached, given that the written agreement said nothing about its duration.

Bart Greenwald, Shane's lawyer at Frost Brown Todd, filed an amended complaint, still not mentioning the oral contract but saying the breach was based on Bunzl's "conduct and promises" before and after the 1995 written deal.

Simpson again dismissed the claim, for the same reason. Greenwald tried to file yet another claim, this time specifically citing the oral contract, but by then it was too late.

The time period for amending the suit had expired, according to a Simpson decision affirmed by the U.S. 6th Circuit Court of Appeals.

In 2008, Shane hired McMurry and sued the law firm for its alleged mistake.

"FBT's failure to plead the oral contract was unquestionably the result of a lack of reasonable competence — a fact that FBT itself recognized, only too late," McMurry said in court pleadings.

'Strategic decision'

In its defense, Frost Brown Todd said in court documents that it made a "strategic decision" not to mention the oral contract in the first and second complaints.

The firm said the suit would have been dismissed on those grounds, in part because of a rule requiring such contracts to be put in writing.

But according to an internal law firm document, when Bunzl raised the same argument in the underlying case, Greenwald said it was "so wrong that it is laughable."

Frost Brown Todd also has said that when Shane briefly abandoned the firm, then rehired it in 2003, he signed a release promising not to sue it for any work it did previously.

But Jefferson Circuit

Judge McKay Chauvin ruled in December that the waiver was invalid because ethics rules require clients to sign such releases only when represented by "independent counsel" — not the firm he is absolving of liability.

Chauvin said Shane either had no lawyer when he signed it or was represented by Frost Brown Todd, which could not be considered "independent."

Reporter Andrew Wolfson can be reached at (502) 582-7189. Reporter Jason Riley can be reached at (502) 584-2197.

NOTICE OF PUBLIC HEARING

KIPDA DIVISION OF SOCIAL SERVICES

11520 Commonwealth Drive
Louisville, KY 40299

The Kentuckiana Regional Planning and Development Agency (KIPDA), Division of Social Services, in its capacity as the designated Area Agency on Aging and Independent Living serving the Kentucky counties of Bullitt, Henry, Jefferson, Oldham, Shelby, Spencer, and Trimble, is inviting the general public to attend any or all of the public hearings scheduled to view and comment on the Regional Area Plan covering the period Fiscal Year 2012-2014. Comments can be submitted by February 25th, 2011. The Regional Area Plan will be submitted to the Kentucky Department of Aging and Independent Living (DAIL) by February 28, 2011. All public comments will be included with the final Regional Area Plan. The following is the date, time and location of each public hearing:

Jefferson County: February 18, 2011 at 2:30pm at Highlands Community Ministries Senior Center, 2300 Douglas Blvd, Louisville, KY 40265

Oldham County: February 18, 2011 at 9:30am at the Oldham County Senior Center, 1015 Dispatchers Way, LaGrange, KY 40031

Shelby County: February 18, 2011 at 11:30am at the Shelby County Public Library, the Hudson Room, 309 Eight Street, Shelbyville, KY 40065

On February 11, 2011 The Executive Summary of the Regional Area Plan will be available on the KIPDA website or a hardcopy can be provided upon request. To obtain more information about the public hearings, contact Barbara Gordon, KIPDA Director of Social Services, 11520 Commonwealth Drive, Louisville, KY 40299. Barbara.gordon@ky.gov or visit the KIPDA website at www.kipda.org. Refreshments will be provided.

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