

# MICHIGAN LAWYERS WEEKLY

www.milawyersweekly.com

Tuesday, December 30, 2008

Lawyers Weekly, Inc.

[Try 3 Free](#) | [Subscriber Services](#) | [Our Newspapers](#) | [Other Products](#) | [Advertise](#) | [Help](#)

From the December 08, 2008 Michigan Lawyers Weekly.

Order a REPRINT  
of this Story

## Verdicts & Settlements

### Consent resolution questioned after exec resigns

#### Ex-officer claims terms of buyout altered, buy-sell provision removed

##### ADVERTISEMENT

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 al., v. Fosgard, et al.

**Court/Case no./Date:** Oakland County Circuit Court; 08-081339-CK; Aug. 27, 2008

**Name of judge:** Mark A. Goldsmith

**Settlement amount:** \$1 million

**Attorney for plaintiff/counter-defendant:** Withheld

**Attorneys for defendant/counter-plaintiff:** Brian E. Etzel, David H. Fink

© 2008 Lawyers Weekly Inc., All Rights Reserved.

---

**Order a REPRINT  
of this Story**

---

[User Agreement For Subscriber-Only Online Benefits](#) | [Help](#) | [Our Privacy Policy](#)  
Send any questions or comments to [comments@lawyersweekly.com](mailto:comments@lawyersweekly.com)

**Subscriber Services:** 1-800-451-9998    **Technical Support:** 1-800-451-9998

© Copyright 2008 Lawyers Weekly, Inc. All Rights Reserved



Lawyers Weekly does not use spyware; however, we link to a number of other sites and do not take responsibility for any spyware they may use.

This site is best viewed with Internet Explorer 6 ([click here to download](#))

74.94.236.105/5.93