

Two Prominent South Carolina Businesses found liable for Millions in Damages

December 17, 2015

A group of former and current employees of South Carolina-based ArborGen, Inc., have been awarded damages of \$53,508,288.00 against ArborGen, Inc., and its founding and current members, MeadWestVaco Corporation (MWV) now “Westrock”, International Paper Company and New Zealand based Rubicon, Ltd.

The judgment also imposes liability on former and current ArborGen, Inc. board members Bruce Burton, Luke Moriarty, Mike Andrews, Kenneth Munson, George O’Brien, Mark Watkins, Scott Wallinger and Wayne Barfield. Board member David Liebetreu, former board member William Baughman, and former CEO Barbara Wells were also named in the suit and found liable to the employees in varying amounts.

ArborGen was formed in February 2000 by combining all of the biotechnology forestry research and development programs of three leading forest products companies: International Paper Company, Westvaco Corporation, now MeadWestVaco Corporation and Fletcher Challenge Limited, now known as Rubicon Limited.

The Plaintiffs, all former International Paper or MWV employees, brought a variety of claims related to a long-term incentive plan that was offered to them as part of their initial compensation package when they were hired into ArborGen. Claims asserted include violation of the South Carolina Payment of Wages Act, negligent misrepresentation, breach of contract accompanied by a fraudulent act, breach of fiduciary duty and civil conspiracy.

The employees alleged that the defendants failed to honor the employees’ rights in the long-term incentive plan they signed on for, and that the defendants willfully and intentionally used misrepresentations, concealments and fraudulent actions to mislead them.

At the time of their hiring in 2002-2003, the plaintiffs asserted that ArborGen was valued at \$100,000,000. Plaintiffs alleged they were led to believe that each of them received a potentially lucrative option in their compensation packages allowing them to share in the future growth of ArborGen. Plaintiffs claimed that, as the company began to grow, the founders, through their appointed ArborGen Board members, decided that the compensation package provided to these employees was too rich.

According to the Plaintiffs, the defendants orchestrated a scheme to switch the option plans given to the employees, diluting the value of the original option plan. Plaintiffs claimed the plan

change was introduced to the employees with false information, misrepresentations, and concealment as part of a wrongful scheme to defraud them of their rights in the plan.

Plaintiffs further contended the defendants instituted the plan switch scheme to take advantage of their trusting employees. The scheme, as implemented, deprived the employees of their potentially very valuable rights in the original incentive plan that was part of the compensation package they received when they left their jobs at International Paper and MWV to join ArborGen.

In 2010, ArborGen LLC converted to a C-Corporation. As a result of the conversion, the employees were entitled to receive an equitable award in the successor incentive plan of the ArborGen corporate entity. Plaintiffs maintained that this meant they were entitled to value based on the plan they received when they were hired, but the defendants did not honor the original plan which they deemed to be too rich. Instead, plaintiffs were given rights in a plan that had a value around 90% less than what they had been promised. The result of the orchestrated scheme was to pass on less ArborGen equity value to the employees, while preserving more value for ArborGen's founding members, International Paper, MWV and Rubicon.

On the date of the C-Corporation conversion, ArborGen was valued at around \$650,000,000. Plaintiffs claimed the \$550,000,000 in growth experienced by ArborGen was to be shared in by the employees, but the defendants failed to provide the employees with the value they were entitled to. The case was tried earlier this year in a trial that lasted almost three weeks in Dorchester County before the Honorable Edgar W. Dickson. After hearing weeks of testimony from various witnesses and after considering the arguments and briefs submitted by counsel, the Court found in favor of the employees on all causes of action before the Court except one, violation of the South Carolina Unfair Trade Practices Act, which the Court found not to apply to the situation presented before the Court.

Actual damages were awarded by the Court to the employees for the lost value they were to receive under the plan in the amount of \$10,812,315.00. The Court awarded the employees \$32,436,945 in punitive damages finding that the defendants' engaged in a concerted, organized campaign using deception to mislead plaintiffs so ArborGen would not have to honor the incentive plan it gave to the employees. The Court added prejudgment interest and attorney's fees to its award against the Defendants increasing the total award to \$53,508,288.

The employees' attorney, Chip Bruorton of Rosen Hagood in Charleston, SC, stated "I am extremely happy for my clients. The Court took a great deal of time and effort to understand the facts of this case and made a decision that is supported by the evidence presented.. My clients were wronged, and I'm happy that their rights have been vindicated. Co-counsel, John Freeman, stated that "the parties got a fair trial, with each side being given an opportunity to

tell their side of the story. In the end, the plaintiffs' key claims were proved by clear and convincing evidence."

Rubicon, Ltd. has already issued a statement that it intends to vigorously appeal the Court's decision.