

Largest Verdicts and Settlements of 2011

For PI plaintiffs' bar, jurors prove to be biggest obstacle

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By Mass. Lawyers Weekly Staff

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Selmark Associates Inc. on Behalf of Marathon Sales Ltd. v. Ehrlich, et al. An electronic parts salesman who claimed he was deprived of stock and wrongfully fired during a company takeover in Milford was awarded \$3.26 million in Worcester Superior Court. The case pitted Evan Ehrlich, the plaintiff in a counterclaim, against David Elofson, Selmark Associates, Inc., and Marathon Sales, Ltd., after Elofson fired Ehrlich on the eve of the conversion of his Marathon stock into Selmark stock. When he fired Ehrlich, according to the complaint, Elofson barred him from acquiring Selmark stock to which he was entitled per an arrangement reached between the two. Ehrlich had worked for Marathon, which was being taken over by Selmark. Both entities offered sales services to electronic manufacturers in New England that did not have in-house sales teams. Ehrlich, according to the complaint, was supposed to become a vice president and director of Selmark, with “a base pay and benefits comparable to the base pay benefits he was receiving from Marathon.” An arrangement between Ehrlich, Marathon and Selmark required the purchase of company stock over a six-year period, at which time Ehrlich would be able to convert his Marathon stock to shares of the purchasing company, Selmark. But Elofson fired Ehrlich, giving as an explanation that Ehrlich was “not a worthy successor” as

grounds for the termination. Robert D. Cohan of Boston's Cohan Rasnick Myerson LLP, who represented Ehrlich, challenged that explanation as a "fabrication so he could fire him and take all the stock." One of the plaintiff counterclaimant's expert witnesses, Jeffrey Davis, a business consultant from a company called Mage Inc., testified to the variety of alternatives commonly considered to avoid terminating a valued employee or owner. "In our case, the defendant, Elofson, made no effort whatsoever to pursue less drastic measures," Cohan says. Davis' testimony, according to Cohan, was effective in "opening the jury's eyes to the great number of ways you can save someone's job if you want to." The plaintiff brought counterclaims for breach of contract — written, implied-in-fact and by estoppels; breach of the implied covenant of good faith and fair dealings; violations of the Wage Act; negligent misrepresentations; fraud; unjust enrichment; and unfair practices in violation of G.L. c. 93A. Attempts to reach the attorneys for Elofson, Selmark and Marathon failed.