

CLASS ACTIONS

2012 MILLION-DOLLAR VERDICTS & SETTLEMENTS

#3

Residents seek relief after city-planted trees damage their property

12-year lawsuit mired in appeals over whether class status holds

\$1.42 MILLION

Plaintiff Timothy Carlson, representing all other similarly situated people, sought damages from defendant city of Warren, alleging claims of trespass-nuisance, constitutional taking, and violation of due process after city-owned trees damaged residents' property.

In the 1950s and 1960s, the city planted fast-growing trees, including silver maples, on the portion of residents' properties between the street and sidewalk. Because of the trees' highly aggressive root system, homeowners sustained clogged and broken sewer pipes, damaged lawns, broken sidewalks, and sewer backups into their homes.

Many homeowners sought to mitigate their damages by having the nuisance trees removed, but the city's ordinance made it illegal to do so, effectively barring residents from engaging in self-help. A suit was filed in May 2000.



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The circuit court initially denied class certification to plaintiffs, finding there were too many individualized issues to warrant a class action. The ruling was reversed by the Court of Appeals, then reversed again by the Michigan Supreme Court.

When plaintiffs demonstrated that common issues of law and fact predominated, the circuit court in 2004 certified the case as a class action.

The city then appealed to the Supreme Court, which remanded the case to the Court of Appeals to determine whether the decision of *Pohutski v City of Allen Park*, 465 Mich 675 (2002) — which abolished the trespass-nuisance cause of action except in existing "cases," and was decided two years after this suit was filed — affected the circuit court's ruling.

The Court of Appeals upheld the class certification, and also found that the case would retain the benefit of the pre-*Pohutski* exception to governmental immunity for trespass-nuisance.

In 2010, the city filed motions seeking: summary disposition of plaintiffs' claims on seven different grounds; imposition of a mandatory pretrial proof-of-claim procedure; bifurcation of the trial into separate liability

and damages phases; and decertification of the class.

Plaintiffs prevailed on almost every legal point at issue in the summary disposition motions, and defeated the city's motions for a pretrial proof-of-claim requirement and bifurcation of trial.

After the city filed additional appeals, in early 2012, the Supreme Court denied leave to appeal in part, and remanded the case back to the Court of Appeals for consideration of a statute of limitations question involving the "continuing wrongs" doctrine.

Before the remanded questions and the pending claim of appeal could be heard, the case settled for \$1.42 million.

Types of actions: Class action for trespass-nuisance, constitutional taking, violation of due process

Type of injuries: Property damage

Name of case: *Carlson, et al. v. City of Warren*

Court/Case no./Date: Macomb County Circuit Court; 00-1823-CZ; Oct. 9, 2012

Names of judges: Matthew Switalski, James Biernat Sr.

Facilitator: Jon Muth

Settlement amount: \$1.42 million

Most helpful experts: Robert Cool, forestry, Lansing; Paul Bladdick, plumbing, White Lake Township

Attorneys for plaintiffs: Gerard Mantese, Stuart Fraser IV, Brian Saxe

Attorney for defendant: John Gillooly