

Jury Awards \$178.7 Million Against NL Industries, Inc.

DALLAS, Texas — A Dallas County jury has awarded more than \$178 million to minority shareholders of an NL Industries, Inc. subsidiary who alleged that a pattern of misconduct deprived them of the true value of their investment.

Defendants included Dallas-based NL Industries, its subsidiary NL Environmental Management Services, Inc. (NL EMS) and Dallas businessman Harold Simmons, who controls NL Industries. The verdict was delivered late Friday, July 17, 2009 in the 192nd Dallas County Civil District Court.

In 1998, the plaintiffs, Efficasey Environmental LLC, Highland Environmental Management, LLC, and Industrial Recovery Capital Holdings Company, invested in NL EMS. For the next seven years, the minority shareholders ran the subsidiary, which was created to manage the cleanup of environmental liabilities for NL Industries across the United States. NL Industries retained a controlling position in the subsidiary, and when the plaintiffs exercised their contractual right to sell their stock back to NL Industries in 2005, NL Industries refused to pay more than a small fraction of what the stock was worth.

Plaintiffs proved during the two-week-long trial that NL Industries and several of its officers had improperly drained NL EMS of assets in the months leading up to the minority shareholders' sale of their stock back to the company. The plaintiffs also showed that defendants were guilty of bad faith by artificially reducing the value of the assets that they left in the company.

The Dallas County jury found NL Industries liable for breaching its fiduciary duty to the plaintiffs. In addition, the jury found three executives of another Simmons-controlled company, including Simmons himself, liable for conspiring to drain assets from the company and improperly calculating the value of the plaintiffs' stock.

The jury's award includes \$33.7 million in actual damages and \$140 million in punitive damages against NL Industries. Jurors levied an additional \$5 million in punitive damages against NL Industries' general counsel. "The jury clearly wanted to send a message to Mr. Simmons that his companies must play by the rules," says Steve Susman, lead attorney for the plaintiffs. "They may have tremendous leverage over little guys like my clients, but they still have to follow the law."

Co-counsel Tom Melsheimer of Fish & Richardson, P.C. called it a victory for Main Street over Wall Street. "I think jurors were offended at the extraordinary steps defendants took to 'hide the ball' and to resist our clients' lawful attempts to receive what they had earned."

The \$178.7 million dollar verdict is believed to be the largest verdict in Dallas County, Texas in 2009.

Plaintiffs Efficasey Environmental and Industrial Recovery Capital Holdings Company were represented by Steve Susman, from Susman Godfrey's Houston and New York offices, as well as three other Susman Godfrey attorneys, Steve Morrissey (Los Angeles), Katherine Treistman (Houston) and Stephen Shackelford, Jr. (Dallas).

Plaintiff Highland Environmental Management was represented by attorneys in Fish & Richardson's Dallas office including Managing Principal Tom Melsheimer, M. Brett Johnson, Renee Skinner and Scott Thomas.

