

Susman Godfrey Secures More than \$300 Million for Minority Shareholders in Promega Corporation after Month-Long Bench Trial

Susman Godfrey and its co-counsel at Hansen Reynolds LLC have secured more than \$300 million for a small group of minority shareholders in a shareholder oppression lawsuit against Promega Corporation and its CEO and founder, William Linton—“a dispute that involves elements of money, power and drugs,” according to the *Wisconsin State Journal*. Promega is a privately held Wisconsin biotechnology company. The settlement is one of the largest recoveries in a shareholder oppression case in the United States, and the largest such recovery after a trial.

Susman Godfrey’s clients were longtime minority shareholders in Promega. They held their shares for decades, waiting for the opportunity to achieve a fair-value return on their investment. But the minority shareholders became concerned that Linton wanted to change Promega’s direction. This concern arose when, the minority shareholders alleged, Linton proposed an initiative, dubbed “Project Phoenix,” to change the direction of the company and foreclose the possibility of a significant liquidity event (whether a sale, strategic transaction, or public offering). The shareholders alleged that to obtain a controlling interest and cement Promega’s perpetually private status—a situation that would have left minority shareholders stuck with illiquid stock—Linton pushed to conduct a large share buyback in 2014.

During that 2014 stock buyback, and against Promega’s board’s direction, the minority shareholders claimed that Linton pressured shareholders to sell their shares back to Promega at depressed prices by raising the prospect that they would not have a future opportunity to sell. Then in 2015, the minority shareholders made a proposal to purchase all shares of Promega at a substantial premium to the price at which Promega was buying back stock from shareholders. They also raised concerns about and requested that Promega’s board investigate Linton’s conduct during the 2014 buyback transaction. In response, the minority shareholders alleged, Linton interfered with Promega’s directors’ exercise of their fiduciary duties, leading all of Promega’s independent directors to resign en masse. Promega’s new board, which consisted entirely of insider employees who reported to Linton, rejected the shareholders’ proposal.

In mid-2016, the minority shareholders engaged Susman Godfrey who filed a lawsuit on their behalf in Dane County, Wisconsin state court. The complaint asserted a single cause of action for shareholder oppression under Wisconsin’s corporate dissolution statute, arguing that Promega and Mr. Linton engaged in burdensome, harsh, and wrongful conduct. Three years of intense litigation ensued, during which the Susman Godfrey team built the case and defeated Promega’s multiple efforts to end the case, including motions to dismiss and for summary judgment.

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In July 2019, the Court held a month-long trial that involved complex issues relating to corporate control, governance, liquidity, and valuation. Susman Godfrey lawyers [Jim Southwick](#), [Alex Kaplan](#), [Ryan Caughey](#), [Adam Carlis](#), and [Elizabeth Hadaway](#) represented the minority shareholders at trial, and each member of team examined pivotal witnesses and handled major arguments. At the conclusion of trial, the judge stated that she was “strongly leaning to find oppression,” and that the lawsuit helped protect the rights of all minority shareholders—without the lawsuit and facts it brought to light, the judge explained, “things could have been a lot worse for the minority shareholders at Promega.”

In August 2020, while the court was preparing its final judgment, Susman Godfrey successfully negotiated a resolution for the minority shareholders. Promega acquired Susman Godfrey’s clients’ Promega shares for more than \$300 million—a huge premium over the pre-suit redemption price and the valuation Promega argued at trial.

“This is a great result for our clients, particularly because Promega foreclosed the normal range of liquidity events for minority shareholders and refused to repurchase their shares, given the size of their holdings, at anything approaching a fair value,” said Jim Southwick, Susman Godfrey’s lead lawyer on the case. “On top of that, Promega responded to this lawsuit with meritless and vindictive counterclaims, which were promptly dismissed, attacking our clients’ richly-deserved stellar reputations in the Wisconsin community,” Southwick added. “This settlement was possible only because our client group had the conviction to see this through and we prosecuted their case aggressively all the way through trial.”

“Our clients tried to resolve this dispute commercially, but their efforts were rejected at every turn. They concluded they had no choice but to pursue their rights in court,” said Susman Godfrey partner Alex Kaplan, who second-chaired the case. “A trial on the merits was ultimately the only way to protect our clients’ substantial investment. The evidence uncovered during the litigation and presented at trial was so compelling that, in my view, Promega saw the writing on the wall in terms of an imminent final judgment.”

Texas Lawyer covered this win in their “How We Won” series. Read that article [here](#).