

LEWIS A. REMELE JR.

BASSFORD REMELE, P.A.

Getting \$30 million in severance benefits from a jury is no easy feat. Getting \$11 million in contingency fees from a judge, over and above the verdict, may be unheard of.

But that's exactly what Minneapolis attorney Lewis A. Remele Jr. accomplished for an ex-CEO who sued his former employer for breach of contract.

Ronald Zebeck had been chairman and CEO of Metris Companies since 1994. He was fired in December 2002, and the company was acquired by HSBC Finance three years later. Zebeck alleged that Metris breached a change of control severance agreement and that he was entitled to benefits.

The case was much more challenging than Remele anticipated, in part because at the same time Zebeck was suing Metris, he was also a defendant in shareholder lawsuits being pursued against the company and its executives.

"On the one hand he would be going to depositions in the shareholder cases and he was on the same side as the company, but on the other hand we were suing [the company]," Remele explains. "So it made it really kind of weird and difficult and different. And to some extent the company was taking different positions on different pieces of litigation."

After more than three years of discovery and nearly a month of trial, a Hennepin County jury determined that Metris did not have cause to terminate Zebeck and that his termination was in anticipation of a change of control of the company. The jury awarded Zebeck \$30.2 million in damages.

The good news continued a few months later when Judge Kevin S. Burke ordered Metris to pay more than \$11 million in contingent legal fees Zebeck incurred in suing for his severance benefits.

Remele explains that language in the change-in-control agreement stated that Zebeck

would be entitled to reimbursement of attorney fees and expenses incurred in good faith in an attempt to obtain benefits under the contract.

Metris argued that it should only be liable for fees billed according to an hourly rate — about \$1.5 million in this case.

But Remele contended that the plaintiff was entitled to recover the contingency fees he paid the firm because nothing in the language of the change-in-control agreement barred him from retaining counsel.

"The contract doesn't say hourly fees," Remele stresses. "It just says that he's entitled to his attorney fees. And they drafted the agreement, the company."

The defendant has appealed, but Remele is confident his client will continue to be successful. He's not convinced, however, that the case will have a lot of precedential value. "My argument is that it really revolves around this contract and the court's got to interpret this contract," he says.

Regardless what happens on appeal, Remele says the decision has a good lesson in it for lawyers: Be very clear in wording these types of agreements so there is no doubt as to the parties' intent, and specify the kind of fees recoverable.

In addition to his busy litigation practice, Remele has been active over the years in a variety of professional associations and policy-making groups. Most recently, he served as chair of the Minnesota Supreme Court's Legal Certification Review Task Force.

Approaching 60, Remele has no intention of slowing down.

"I think it is a very stressful way to make a living," he says. "But it's also fun. I'm still having fun doing it and enjoying it."

— Michelle Lore

MINNESOTA LAWYER
ATTORNEYS
OF THE YEAR 2007



LEWIS A. REMELE JR.

Born: Nov. 25, 1948; Minneapolis

Education: Creighton University School of Law, J.D., 1975; Harvard University, A.B., 1970

Employment: Bassford Remele, shareholder, 1989-present; Rider Bennett, partner, 1978-88; Simonson & Bartsh, attorney, 1977-78; U.S. District Court of Minnesota, law clerk to Judge Miles W. Lord, 1975-77

Professional Associations: Academy of Certified Trial Lawyers of Minnesota; American Bar Association; American Bar Foundation; American Board of Trial Advocates; American College of Trial Lawyers; DRI; Hennepin County Bar Association; International Society of Barristers; Minnesota Defense Lawyers Association; Minnesota State Bar Association

Community Activities: Harvard Alumni Association; William Mitchell College of Law Board of Trustees

Hobbies/Interests: Golf; history; reading; running; tennis

Personal: Wife, Connie; four children; four grandchildren

GETTING \$30 MILLION IN SEVERANCE BENEFITS FROM A JURY IS NO EASY FEAT. GETTING \$11 MILLION IN CONTINGENCY FEES FROM A JUDGE — OVER AND ABOVE THE VERDICT — MAY BE UNHEARD OF.