

**TESTIMONY BEFORE PUBLIC SAFETY SUBCOMMITTEE OF THE WAYS AND
MEANS COMMITTEE**

MARCH 20, 2013

J. Matthew Donohue, Shareholder

Markowitz Herbold Glade & Mehlhaf, P.C.

Good afternoon. Members of the committee, my name is Matt Donohue. I live at 2825 SW Fairview Blvd, Portland, Oregon, and I am a shareholder in the law firm of Markowitz Herbold Glade & Mehlhaf, P.C. (“MHGM”). I strongly support the restoration of funding to Oregon state courts.

Our court system is functioning, but it is on life support. I see this almost every day as a commercial litigator in state courthouses throughout Oregon. At MHGM, the only thing our 21 lawyers do is business litigation. We represent Oregon companies and individuals (as plaintiffs and defendants) in breach of contract cases, shareholder disputes, trademark and licensing disagreements, competition cases, and class actions. We have also represented the State of Oregon in several matters over the years, including our current representation of the State against the tobacco manufacturers related to payments under the master settlement agreement, and our representation of the State and the former Attorney General in the Long case.

MHGM has litigated just about every imaginable dispute that could arise in the commercial context, from cases involving hundreds of millions of dollars to hundreds of thousands of dollars.

As you might imagine, we spend a lot of time in Multnomah County Circuit Court, but we also litigate cases in a large number of other counties – Clackamas, Washington, Deschutes, Marion, Jackson and Curry – are all Circuit Courts we have appeared in recently.

I will be blunt. The lack of funding over the last several years has hurt our clients in three significant ways. First, litigants cannot get timely access to the courts. Second, litigants are not receiving timely decisions. Third, once we get access – and once we win – we cannot get timely access to judgments.

Let me give you an example on how the lack of court access impacted one of my clients. I represented a large Oregon company – one of the top 20 largest privately-held companies in Oregon – in a case involving stolen trade secrets, among other things, by a former employee. The case was filed by the company in 2008, and set for a quick jury trial. The company wanted its day in court to stop its former employee from competing against it. It never got that day in court. Why? The Deschutes County Circuit Court simply did not have the capacity to try an 8-day civil jury trial.

Last September, we had our fifth or sixth trial setting. I packed up my entire trial team, moved everything we needed for trial physically to Bend, had all the witnesses and experts come into town, and went over to set up the courtroom for jury selection. The court clerk came out to deliver the bad news. We had been “bumped” off the trial schedule again – the court had just been assigned a criminal case, and that took precedence over our civil matter. There was nothing to do except pack everything back up and go home.

The company spent many tens of thousands of dollars getting ready (again) for a trial that felt like it was never going to happen. The company wanted to try the case. It believed it was right. It believed the court system would correct a wrong and a jury would tell its former employee that he violated the rules of competition. The company simply could not, however, get into a courtroom to get that justice. So, after five frustrating years, the company settled the lawsuit.

But even when our clients have had their day in court and won, the budget cuts have had an impact. Recently, my partner Matt Levin tried a minority shareholder case in Multnomah County Circuit Court. MHGM represented a minority shareholder against his employer and majority shareholder. The employer unfairly fired our client from his long-time job, and tried to force our client to sell his stake in the company for a fraction of what his shares were actually worth.

In August 2011, the jury agreed with our client, finding that no cause existed for the employer to fire him. It took almost a year – May 2012 – for the court to conduct a bench trial and agree with our client that the employer and majority shareholder breached their fiduciary duties and engaged in oppressive conduct. The court awarded our client more than a \$3 million dollars for the value of his shares and lost wages, among other things.

The only thing left in the case is to have the court issue a judgment. I believe that judgment will be entered today, after almost another full year. This was a complicated case that required many court appearances after trial, but the Court was unable to schedule hearings for weeks at a time. Now, having finally obtained the judgment, the appeals process can start. Our client is still a long way off from reducing that judgment into money that will make him whole. And while he waits for justice, he is working at another job for much less than his old salary. But he is on his way.

I want to stress that in both of the above cases, the judges and the court staffs have worked extremely hard. Judges are working nights and on the weekends. Judges have told us that they cannot schedule civil cases because they are being put back on the criminal misdemeanor docket, for example. The judges have lost their judicial clerks and, as a result, do not have important support for the research and writing necessary in their decision making. In some cases, the court has asked us to bring copies of the briefing to the courthouse because they do not have the paper to print out electronic copies. Make no mistake, the judges and other court staff are suffering also. Their performance in the face of these budget cuts should be commended.

I also want to stress that both of the above cases represent issues going on in every case filed in Oregon state courts. These problems are happening (in one form or another) in every case filed by MHGM, as well as every case filed by other law firms. These budget cuts have impacted every civil litigant.

In conclusion, I ask you to restore funding to the Oregon courts. Restore access to the courts for Oregon's business community. Restore justice for Oregonians.

Thank you for your time.