Multnomah County jury awards family $65.5M in lawsuit against PricewaterhouseCoopers

The Marshall Brothers, John and Dick, founded a heavy construction firm in the Portland area in the mid-1960s. This is an undated photo from a job site.

Marshall family

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A Multnomah County jury this week returned a $65.5 million damages verdict against PricewaterhouseCoopers, finding the accounting giant was negligent in its advice to the owners of a Portland-area firm.

After four hours of deliberation on Monday, the circuit court jury returned a unanimous verdict in favor of Karen Marshall and Patsy Marshall, the widows of brothers John Marshall and Richard (Dick) Marshall, who didn't live to see the outcome after decades of legal and financial ups and downs, including the ill-fated sale of the family construction company in 2003.

“The Marshalls are good people, and the jury found correctly that they were let down by PwC,” said Jeff Pitzer, a Portland attorney representing the Marshalls.

Pitzer declined further comment, as did Karen and Patsy Marshall, who are in their 80s and testified during the two-week trial.

The jury awarded economic damages of $84.5 million to the Marshalls, but it found that PwC was 77.5% negligent and the Marshalls were 22.5% at fault.

PwC said it expects to win on appeal.

“We stand behind the work we did and strongly disagree with the jury’s decision,” PwC said in a statement.

Start of Marshall brothers' troubles

The Marshall brothers founded Marshall Associated Contractors Inc. in 1965 out of Dick’s Happy Valley garage, later moving the headquarters to Tualatin. MAC, as it was called, specialized in heavy construction, such as dirt moving, trench digging and rock crushing. It laid sewer pipe all around the Portland metro area for decades.

Dick Marshall fly fishing in an undated photo

Marshall family

In the mid-1980s, the Marshalls hit a difficult patch. They had won a big contract with the U.S. Bureau of Reclamation to crush large rocks into gravel for the construction of the Upper Stillwater Dam in central Utah. But the rock was harder and sharper than the government had represented, so they couldn't perform and were thrown off the job, Pitzer said in his opening statement to the jury.

MAC was tangled up in a legal dispute with the bureau for 18 years and incurred substantial losses. In 1999, Dick Marshall suffered a debilitating stroke and died about 15 years later. John Marshall died at age 82 last year.

The Marshalls were vindicated in 2002, when the Department of Interior Board of Contract Appeals ruled in their favor and awarded them $40 million.

Little did they know that a new round of troubles was about to begin.

The Marshalls, who were in their 60s and ready to retire, sought advice from PwC about the tax consequences of the $40 million award, according to their lawsuit, which was filed in 2017. They received an offer by a San Francisco-based company called Fortrend, which proposed to purchase all of MAC's stock and assume all of its liabilities, including the expected taxes. Fortrend is now defunct but had engaged in the promotion of illegal tax-shelter transactions, according to the Marshalls' complaint.

PwC had done three "massive transactions" with Fortrend, totaling $300 million, in the years prior to when they were advising the Marshalls, and all three were under IRS scrutiny, Pitzer told the jury.

Fortrend claimed it would use MAC's tax liabilities to "legitimately offset" tax deductions associated with Fortrend's own debt-collection business, and that the Marshalls would realize a greater net return on their investment than if they simply distributed their assets to the shareholders, according to the Marshalls' complaint.

Unbeknownst to them, "Fortrend's representations and assurances were knowingly false," their complaint says.

The Marshalls were not sophisticated in business and tax issues, so John Marshall engaged PwC and its long-time legal advisers at Schwabe Williamson & Wyatt for advice on the proposal and potential tax ramifications.

PwC identified potential risks as "minimal" and recommended that the Marshalls go forward with the transaction, according to the complaint. For six months, PwC gave the Marshalls "the wrong advice," Pitzer said in his opening statement.

The family didn't know that PwC's Portland office was "totally inexperienced" with the type of transaction they were about to enter into, one the IRS might consider a tax shelter, Pitzer said.

"They didn't tell the Marshalls that they were at the beginning of a disaster that could, in essence, ruin their lives," Pitzer said in his opening statement.

PwC gave them a "milquetoast" warning, Pitzer told the jury. If the Marshalls had been told the transaction didn't comply with the law, they never would have done it, he said. John Marshall "was not a wild risk-taker," Pitzer told the jury.

Indeed, the brothers wound up defending themselves for the next decade in U.S. tax court, which ruled they owed the IRS $20 million in back taxes, penalties and interest (now amounting to $50 million) that Fortrend was supposed to pay on MAC's behalf, according to their lawsuit.

PwC's attorneys contend that the firm "specifically told John Marshall" that the transaction was an improper tax shelter and advised him not to go forward, they said in a brief. The Marshalls' lawsuit is nothing more than an attempt "to force PwC to pay the very taxes that (they) themselves refused to pay," PwC said.

"They conveyed their absolute concern," Christopher Landgraff, an attorney for PwC said in his opening statement. "They warned them that the IRS was going to investigate and this could be a problem. They did everything Mr. Pitzer said they should have done."

PwC's 'Wow!' email

One key piece of evidence for the Marshalls was an email one of the Portland PwC advisers sent to two PwC advisers in Washington, D.C., in the spring of 2003, the day before the original closing date.

The "Wow!" email, as it came to be known, was one of "the most critical pieces of evidence," but PwC didn't produce it until last February, five years after the plaintiffs requested it and 15 years after PcW was first subpoenaed by the IRS in 2007, the Marshalls' attorneys said in a court document.

The text of the email, which was entered into evidence, reads as follows:

"Wow! I didn't know the basic transaction was risky. I thought we were told this was done all the time and there was not risk to our client. We may have already given our client the wrong advice. We need to talk with the attorneys at Schwabe the first of next week and explain that if this blows up at the IRS, as it probably will, we have a client that doesn't want to give their money back. I can't guarantee the client he won't get sued for aiding and abetting a transaction the sole purpose of which was to evade income tax. If Schwabe can't give that guarantee, we need to back off right now."

PwC never discussed those risks with John, Karen or Patsy Marshall or with the Schwabe attorneys, Pitzer said in his opening statement. There is not a single document anywhere showing the advisers' "supposed advice to John Marshall against entering the transaction; no memo to the file, no email back to D.C. confirming that any advice had been given to John Marshall, nothing," Pitzer and co-counsel Peter Grabiel said in a court document.

Pitzer told the jury that the Washington PwC advisers knew that "if you're selling your company, you cannot negotiate to give your tax obligations over to another company," which is what the transaction was designed to do. PwC had a policy to never admit liability, Pitzer told the jury.

"Pricewaterhouse had it within its power to stop it from happening by simply forwarding that email, but they didn't do that," Pitzer told the jury.

Joining Pitzer as co-lead counsel was Scott Hessell of Sperling & Slater in Chicago. PwC was represented locally by attorneys from Lane Powell PC and by the Chicago firm of Bartlit Beck.