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Ottawa Towers lawyers comment on six-year Pontiac Phoenix Center battle: ‘A defenseless case’

By Natalie Broda

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View from Pontiac Phoenix Center.
Photo by Natalie Broda - Digital First Media

Two weeks ago, it was announced that Pontiac and the owners of Ottawa Towers [had struck a deal](#) to end the six-years of litigation over the Pontiac Phoenix Center — Today, lawyers representing the tower’s owners are speaking out about the process.

The tower's owners filed for what would become \$14 million in damage claims after the former Pontiac Emergency Manager Lou Schimmel ordered the center to be demolished in 2012. What would ensue was six years of injunctions, appeals and mediations over the Phoenix Center.

An injunction to stop the demolition was approved by the court in 2012. That year, the city also attempted to close the parking structure in the middle of a work-day. Steven Sallen CEO of Maddin Hauser Roth & Heller PC and Michelle Harrell, attorney, filed an emergency motion leading to the city being held in contempt of court.



The Phoenix Center in downtown Pontiac on Wednesday, May 2, 2018.
Photo by Natalie Broda - Digital First Media

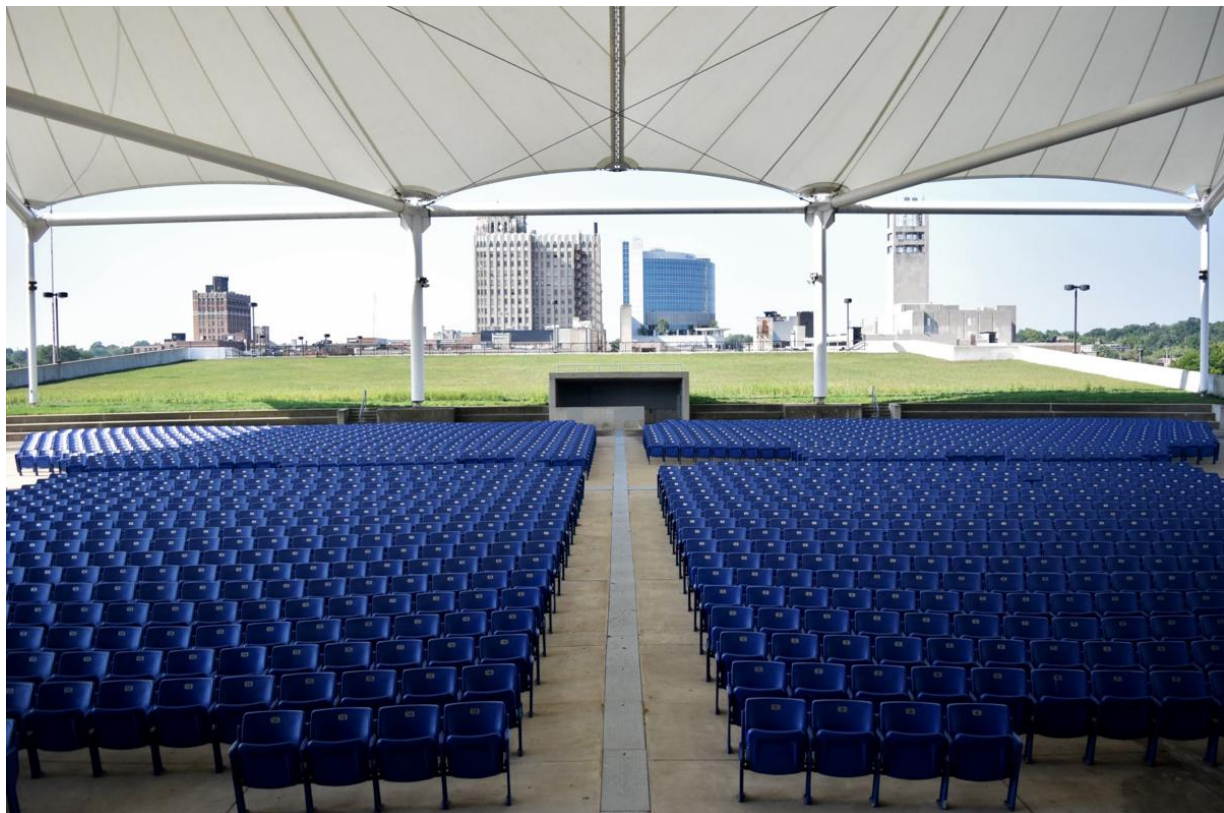
“We were very fortunate that Oakland County Circuit Court Judge Michael Warren was both courageous and steadfast in applying the law to the facts,” Harrell said. “We probably won 11 different rulings since the case started in 2012, which is literally every court ruling that came down, we prevailed on.”

Next, the city of Pontiac filed an eminent domain action to condemn the center. That case was dismissed, which Pontiac appealed, leading all the way to the Michigan Supreme Court, which dismissed the appeal in October of 2016. Pontiac was

subsequently ordered to pay \$350,000 in reimbursements for legal fees to the tower's owners.

"We went into this thinking it was a cut and dry case and frankly, we always felt this was cut and dry. That's why we were shocked the city would defend what we thought was a defenseless case," Sallen said.

Throughout 2017 and this year, a third round of mediation took place, leading to the final settlement: Pontiac keeps the Phoenix Center, but must make \$6 million in improvements to the structure over the next 10 years. A \$4.2 million lump sum is due to Ottawa Towers while an additional \$2.8 million will be paid over the next four years.



View from Pontiac Phoenix Center.
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"Their mindset really changed when they realized the condemnation case was dismissed and that they would have to pay us a significant amount of money in that

case. There was no way out of that for them, and I think at that point they realized they needed to get serious (about a settlement),” Harrell said.

Without the settlement, if Pontiac had lost the long-standing litigation battle, the charges could have gone above \$20 million, Deirdre Waterman, mayor of Pontiac said.

Ottawa Towers will also be able to use the parking structure for free for “more than 10 years,” the settlement states.

“In all of our conversations we were mindful of the city’s limited resources to pay in this case, so we were always looking for ways to create value for the plaintiffs that meant less money out of the city of Pontiac,” Sallen said.

When asked if his clients had any statement about their intention to retain ownership of the towers and stay in Pontiac, Sallen said they haven’t given any official comment. Over the years, upwards of \$7 million in revenue from potential tenants was lost, according to Sallen.

“I think they are fatigued on one hand and extremely disappointed on the other. It cost them so much time, effort, money and grief and heartache to get the final result,” he said.

“When you think about it, they came to Pontiac and put up a substantial investment into an iconic structure and instead of having a good public partner, at every turn they got a poke in the eye with a pencil.”

The backbone of the case hung on the easement rights of the property. When the center was originally built as a private-public partnership 30-years ago, the tenants of Ottawa Towers, General Motors, were given perpetual easement rights to the parking garage. Demolishing or condemning the center was against the owner’s constitutional rights, Sallen said.

