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Sutherland to pay \$175K in sanctions

FIRM'S ATTORNEYS tried to 'litigate plaintiff to death' in contract dispute, judge says

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A DEKALB COUNTY State Court judge has slapped Sutherland, Asbill & Brennan with more than \$175,000 in sanctions after finding its attorneys tried to “litigate [the] plaintiff to death” in a contract dispute.

“In sum, defendants gambled on a bad-faith strategy and lost,” stated the amended order signed by Judge Dax Lopez on Aug. 19.

Sutherland represented international software company Apteon and CDC Software Corp. in a 2012 lawsuit brought by the former general counsel of a subsidiary company. The plaintiff, Timothy Coen, claimed that the companies did not honor his employment contract. It stated that, if Coen were terminated for any reason, he would be paid the remainder of his term's base salary and all of a promised \$100,000 performance bonus within three business days.

Lopez granted Coen partial summary judgment this spring and ordered the defendants to pay him per the terms of his employment contract, said Edwin Schklar,



ZACH PORTER

DeKalb State Court Judge Dax Lopez said Sutherland's clients “gambled on a bad-faith strategy and lost.”

Coen's lead lawyer. Then Lopez awarded Coen attorney fees under O.C.G.A. § 9-15-14. There is a pending claim for tax damages, which is scheduled to be heard in September, Schklar said.

The key to obtaining attorney fees, Schklar said, was a letter sent to him by lead defense counsel Allegra Lawrence-Hardy of Sutherland.

The February 2013 letter sought to intimidate Coen but ended up backfiring when it was cited as proof that the defense acted in bad faith, Schklar said.

“What possessed her to send that type of letter I don't know, but it got her in trouble,” he said. “I've never seen anything like that before, and I've been practicing for 35 years.”

According to the amended order, Lawrence-Hardy wrote: “Prior to your client incurring the expense and risk of motions for summary judgment and trial in this case, we write to inform you that CDC Software’s insurance carrier has recently agreed to cover the costs of defending Mr. Coen’s suit against the company. This development removes the only material litigation risk for the company in pursuing its defense of this case through trial and, if necessary, appeal, which the company fully intends to do.”

Lopez’s order said the letter signaled that “defendant CDC Software adopted a strategy of litigation by attrition.”

“Defendant vigorously litigated baseless defenses in hopes of litigating plaintiff, an individual with very limited resources, to the point where he could no longer afford to continue without settling for a lesser sum,” the order said.

On behalf of Lawrence-Hardy, a spokeswoman for Sutherland said Thursday, “We respectfully disagree with the amended order of attorney fees and we stand by our defense of the client.” The statement did not respond to questions about the February 2013 letter, though it did direct the Daily Report to the defense’s response to the plaintiff’s motion for award of attorney’s fees.

The filing argued that Coen improperly attempted to “parlay his summary judgment victory [in the contract dispute] into an entitlement to attorneys’ fees and litigation expenses.”

The filing also reiterated the defense’s position that Coen’s employment contract was void. The company argued that the agreement was signed while the company was under an injunction ordered by a bankruptcy court barring it from increasing compensation and extending contracts for executives.



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Edwin Schklar said the key to the amended order was a letter sent to him by the lead defense counsel.

CDC Software hired Coen, now a solo practitioner and 33-year member of the bar, in December 2011—and promoted him to general counsel a month later.

However, its parent company, CDC Corp., was in the midst of Chapter 11 bankruptcy, Lopez’s order stated.

In February 2012, CDC Corp. took control of CDC Software and its board, according to case filings. In his lawsuit filed in May 2012, Coen alleged the company essentially stopped paying him until it formally terminated him two months later.

Lopez in DeKalb State Court granted Coen partial summary judgment on April 15, finding that the court did not have the authority to void his employment contract.

“In the bankruptcy case of CDC Corporation, CDC Software wished to pursue an alternative reorganization plan, competing with CDC Corporation’s plan,” Schklar said. “CDC Software and its board and my client himself had slightly differ-

ent fiduciary duties from the board of the parent company. CDC Corporation did not like that. And they said to the people below them, including Mr. Coen and the board of directors, ‘If we get control of the company, good luck because we’re not going to like you.’”

Schklar also said that the companies named as defendants asserted 20 defenses but then dropped all but one of them prior to the March hearing on summary judgment.

“It just shows they were searching for anything,” he said.

Coen originally sought \$248,560.16 in attorney fees and \$2,084.80 in litigation costs. Lopez reduced the amount of attorney fees awarded by \$74,160.16 because not all of the billed hours were justified.

“Though not argued by defendants, the court questions the reasonableness of the hours billed given that plaintiff chose to retain three separate law firms to prosecute this matter. Indeed, plaintiff appears to have numerous lawyers, most at partner levels, working on what amounted to be a straightforward contract action,” the amended order stated. “The court is, nevertheless, mindful of the amount of work created by defendants’ litigation strategy of attrition.”

Schklar said the judge’s decision was fair.

“There probably was some overlap in effort,” he said. Scroggins & Williamson partners J. Robert Williamson and John Sanders IV worked on the case with Schklar. Moorman Pieschel partner Christopher Moorman also was involved earlier in the case.

The case is *Coen v. Apteon*, No. 12A42185-6. ☞