

VERDICTS & SETTLEMENTS

Duo wins \$26M in copyright case

Case: Member Services, Roger and Aaron Banks v. Security Mutual Life Insurance

Case no: 3:06-CV-01164

Description: Copyright infringement

Filing date: Sept. 29, 2006

Trial dates: Sept. 26-Oct. 13, 2011

Jury decision: \$26 million

Judge: U.S. Magistrate David Peebles, Binghamton, New York

Plaintiff attorneys: Peter Herman and Alex D. Brown, Tripp Scott, Fort Lauderdale; Dan Sleasman, Albany, New York

Defense attorneys: Albert J. Millus, Hinman Howard & Kattell, Binghamton, New York; George R. McGuire and David Nocilly, Bond Schoenick & King, Syracuse, New York

Details: Member Services, a small Charlotte, North Carolina-based insurance agency owned and operated by the father-and-son team of Roger and Aaron Banks, sold employee benefit products. Their primary client was Piedmont Aviation Credit Union, which in turn was the credit union for employees of Lowe's Home Improvement.

Member Services developed a sophisticated automated computer system, CU@Work, that allowed for the client account administration and premium collections. It was a front-end system that performed all its applications at the point-of-sale, eliminating many inefficiencies in conventional insurance sales accounting.

In 2003, Member Services entered into a collaboration with Binghamton, New York-based Security Mutual. The company with \$2.5 billion in assets would underwrite its life insurance product for sale to Lowe's employees through Member Services. In exchange, Member Services would disclose its CU@Work system under a confidentiality condition to bridge Security Mutual's electronic administrative functions.

During a transition period, Member Services claimed Security Mutual commandeered its proprietary technology, upgraded its own system and returned to Member Services an inoperable, re-engineered and bug-ridden system. The dysfunctional relationship ended after 22 months.

After its system was damaged, Member Services claimed it lost critical momentum in the industry and lost face with Lowe's for failure to deliver call center operability. Members Services sued Security Manual for copyright infringement, breach of contract, unjust enrichment, tortious interference and other counts.

Plaintiff case: At trial, Member Services showed through Web page exhibits how superior its system was to Security Mutual's version, which was merely a computer rendering of a paper application.

Member Services noted Security Mutual had an exclusive agreement with Schmitt-Sussman to sell its products nationwide to credit unions in a direct, undisclosed conflict.

Through discovery of in-house Security Mutual documents, Member Services showed Security Mutual was in collusion with Schmitt-Sussman in an attempt to carve up Member Services' territory.

In an email exchange between a Security Mutual vice president and another officer, the vice president asked, "Are we going to nuke them and go direct?" Attorney Alex D. Brown translated that to mean Security Mutual wanted to disable Member Services' operation and directly pursue the business with Lowe's.

Defense case: Albert J. Millus, lead counsel for Security



MELANIE BELL

Fort Lauderdale attorneys Alex D. Brown and Peter Herman used old email to prove Member Services was the victim of a scheme to steal its web technology and steal Lowe's as a client.

Mutual, refused to comment, saying the case is still pending.

U.S. District Judge Thomas J. McAvoy laid out Security Mutual's defense when he denied its motion for summary judgment in an order last year.

Security Mutual asserted it developed an upgrade independently and ceased any use of CU@Work by Nov. 1, 2004. The company also said Member Services' system was not as sophisticated as it claimed.

Member Services continued its relationship with Lowe's after ending the collaboration with Security Mutual, but Lowe's ended its relationship with the credit union because Lowe's chief executive officer no longer wanted to outsource member service functions, which meant the loss of that business was unrelated to Security Mutual, McAvoy found.

Outcome: The jury found Security Mutual at fault on all counts, including misappropriating trade secrets, engaging in unfair competition, unjust enrichment, and fraudulent misrepresentation and concealment. The jury awarded \$16 million in compensatory damages and \$10 million in punitive damages.

Quote: "Early in the relationship, there was an email from a higher-up vice president in the information technology department saying when we tell Member Services to download a particular portion of the system, all they will see is garbage. That's the point in time they were taking control of the system," Brown said. "The excuse they gave was we were trying to protect our intellectual control of the property."

Post-verdict: Member Services is seeking 9 percent pre-judgment interest on compensatory damages, which would add \$11 million to the final judgment.

On Oct. 24, Security Mutual filed notice that it would seek a new trial on grounds the "proof submitted by plaintiffs at trial was insufficient to demonstrate viable claims."

If the judge denies a new trial and enters final judgment, Security Mutual argues the damages are excessive.

— Adolfo Pesquera