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Mark DeCoursey <mhdecoursey@gmail.com>

Feb. 16 call. Let's do the math

Degginger, Grant <DeggingerG@lanepowell.com> Thu, Feb 17, 2011 at 10:49 AM
To: Carol DeCoursey <cdecoursey@gmail.com>
Cc: "McBride, Ryan P." <McBrideR@lanepowell.com>, "Gabel, Andrew J." <GabelA@lanepowell.com>, Mark DeCoursey <mhdecoursey@gmail.com>

Carol,
I'm afraid that the description of our conversation of the 15th (not the 16th as stated in your email) omitted a number of crucial statements and misstated others.

The purpose of the call was to discuss our concern with the additional three pages of arguments that you and/or Mark had written and which you wanted us to include in the brief in opposition to review that Ryan had prepared. At the beginning of the call, I explained that there were three reasons why we could not include them: First, we concluded that the arguments were not supported by the statutes and case law. Second, we do not believe that we could argue that they represented a reasonable extension of existing law. Third, I explained that filing a cross appeal is ill-advised and not in your best interest because it puts at risk the substantial victories, including the judgment in excess of $1 million at the trial court, the affirmance of the trial court judgment (except for a portion of the cost award which represented less than 5% of the total judgment), and the award of over half your attorneys fees on appeal. Both Ryan and I emphasized that it is not in your interest to give Windemere the last word to the Court and by filing a cross appeal, the other side will get the opportunity to respond.

Ryan explained why under the law, you only were entitled to obtain attorneys fees on appeal for the CPA claim and that he had done his best to argue for as large an award as possible based the law and his experience preparing the appellate briefing. Ryan also explained that if Windemere had only appealed the judgment for breach of fiduciary duties and not the CPA claim, there would have been no basis for seeking fees on appeal. You responded by saying that the law is an ass and this it allows corporations to screw the public. I responded by pointing out that the best revenge is to win by getting review denied, executing on your judgments and then you will have an effective platform to address any changes in the law that you believe are appropriate, having won.

Towards the end of the conversation, we discussed what you would be putting at risk by advocating for acceptance of review. We explained that the court could reverse everything you have been awarded thus far, including the over $1 million judgment (we didn't say $1.5 million) and the amount awarded by the Court of Appeals for attorneys fees as the prevailing party.

Your email expresses concern about attorneys fees. The irony is that attempting to cross appeal prolongs the fight, and increases fees which likely will not be recoverable.

We have previously responded regarding the interest rates on judgments and the provisions in our engagement letter to which you referred. I don't think it is necessary to review it again. We regularly send you invoices, including one within the last month, describing the work we perform and what the balance is on your account. We note that we have not received a payment since December, 2008, nevertheless, we obtained a very successful result for you in the Court of Appeals. If you would like to have a conversation about our fees, then let's deal with it directly. Fair to say, it is our opinion that the results speak for themselves--which makes this conversation perplexing.

I can't respond to your comment about tax treatments of any awards. I certainly have not had a conversation with you on that topic. You will have to be more specific.

Talk to you soon,
Grant

From: Carol DeCoursey [mailto:cdecoursey@gmail.com]
Sent: Thursday, February 17, 2011 9:00 AM
To: Degginger, Grant
Cc: McBride, Ryan P.; Gabel, Andrew J.; Mark DeCoursey
Subject: Feb. 16 call. Let's do the math

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