

## Alerts

### Federal Court Recognizes Several Legally Cognizable Injuries Resulting From Firm's Conflict of Interest

October 7, 2010

*Lawyers for the Profession® Alert*

*Airgas, Inc. v. Cravath, Swaine & Moore LLP*, 2010 WL 3046586 (E.D. Pa. 2010)

#### Brief Summary

Ruling on a motion to dismiss for failure to state a claim, the U.S. District Court for the Eastern District of Pennsylvania allowed a client to sue its former law firm for breach of fiduciary duty based on an alleged conflict of interest. The court held that each of the following were legally cognizable injuries to the client: attorneys' fees in that action; the cost of finding replacement counsel; the client's inability to obtain financing; and fees paid to the firm during the conflict.

#### Complete Summary

Defendant law firm formerly represented plaintiff in financing related matters. Around the same time, it also represented one of plaintiff's competitors in an effort to purchase plaintiff. Based on this conduct, plaintiff sued the firm in Pennsylvania for breach of fiduciary duty based upon the law firm's alleged conflict of interest. The firm removed the action to the Eastern District of Pennsylvania. Plaintiff also sued the competitor in Delaware, and the firm represented the competitor in that action. Plaintiff moved to enjoin the firm from representing the competitor, but the Delaware court declined to do so. The firm then moved to dismiss the Pennsylvania action for failure to state a claim upon which relief could be granted.

The firm argued that plaintiff failed to plead a legally cognizable injury. Plaintiff alleged four specific harms: (1) attorneys' fees related to the present litigation; (2) the cost of finding counsel to replace the firm; (3) an inability to obtain financing because of the competitor's takeover attempt; and (4) fees paid to the firm during the conflict. The court held, under Pennsylvania law, that each form of harm was legally cognizable.

Most notable among these four were the court's holdings regarding attorneys' fees and plaintiff's inability to obtain financing. The court held, despite the general rule that each party must bear its own legal expenses, that plaintiff's attorney fees amounted to a cognizable harm because plaintiff allegedly was forced to retain counsel to protect itself against the firm's breach of loyalty. The court noted that plaintiff was seeking fees as compensatory damages rather than reimbursement of litigation expenses. And regarding plaintiff's inability to obtain financing, the court held:

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This injury is properly pleaded, because [plaintiff] provides sufficient facts from which the Court can conclude that it is plausible that [the firm's] representation of [competitor], simultaneous with and adverse to its representation of [plaintiff], enabled [competitor]-allegedly armed with [the firm's] intimate knowledge of [plaintiff's] financing plans-to launch its takeover attack at a time when [plaintiff] was planning for additional financing or refinancing.

**Significance of Opinion**

This opinion demonstrates the types of alleged harm that are sufficient to support a breach of fiduciary duty claim in Pennsylvania. On a broader level, it demonstrates that even though a conflict may not warrant disqualification (as in the Delaware action), it may still support a breach of fiduciary duty claim (as in the Pennsylvania action).

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