

GC Violated Duty By Gunning For Share Of Contingency Fee

By **Katie Buehler**

Law360 (February 5, 2020, 5:50 PM EST) -- The estate of the former general counsel of Ruhrpumpen Inc. can't claim \$1.5 million from contingency fees paid to a Houston law firm that won a patent dispute because the in-house lawyer violated public policy by entering the fee-sharing deal without informing the company and getting its consent, a Texas appellate court has ruled.

Cokinos Bosien doesn't owe any of its roughly \$8 million contingency fee win from Ruhrpumpen to the company's late general counsel, who died not long before Ruhrpumpen reached a \$41 million settlement in a patent and trademark infringement dispute with Flowserve Corp., the a three-judge Fifth Court of Appeals panel held Tuesday. The court said the contingency fee sharing agreement the estate of Eugene H. Moore was trying to enforce is void as against public policy.

Overturning a trial court, the appellate panel said Moore's estate can't collect on a purported agreement that Cokinos Bosien would pay him 20% of what the firm recovered because Moore never got the company's consent to the deal and thus violated his fiduciary duties to Ruhrpumpen.

"A company's general counsel owes the company a fiduciary duty not to accept compensation from anyone other than the company for working on a case for the company or referring the case to a law firm without disclosing that compensation to the company and getting the company's consent," Justice Lana Myers wrote for the panel.

The court rejected arguments made by Moore's estate that Moore was Ruhrpumpen's agent and had the authority to consent to the agreement on the company's behalf. If Moore was Ruhrpumpen's agent, then he was also its fiduciary and as a fiduciary he had a duty to not accept a fee or other compensation without his employer's consent, the panel said.

An attorney for the firm, Jeffrey S. Levinger of Levinger PC, told Law360 Wednesday the opinion confirmed what the law firm has believed all along.

"The general counsel of a corporate client shouldn't be able to cut personal checks," he said.

Counsel for Moore's estate did not immediately respond to requests for comment Wednesday.

Ruhrpumpen hired Cokinos Bosien in 2010 to represent it in litigation against Flowserve to enforce an earlier settlement agreement in a patent suit. After hiring the firm, Moore proposed it share part of its contingency fees with him, but no written agreement was ever prepared or signed, according to the opinion.

Ruhrpumpen didn't learn about Cokinos Bosien's agreement with Moore until his estate sued the law firm in 2016 seeking his cut of the contingency fee. At that time, Ruhrpumpen Vice President Marcelo Elizondo sent a letter to Cokinos Bosien stating that the company didn't consent to the agreement, according to the opinion.

Under Texas Disciplinary Rule of Professional Conduct 1.04(f), a client must be advised of and consent to any fee-sharing agreements. The panel said Moore broke that rule.

"In this case, it is not merely the lack of Ruhrpumpen's signature on a fee-sharing agreement that makes the agreement void, it is that Ruhrpumpen did not know of the agreement until after Moore died and that Ruhrpumpen never consented to the fee-sharing even after it learned about the agreement," Justice Myers wrote.

Justices Lana Myers, Leslie Osborne and Erin A. Nowell sat on the panel for the Fifth Court of Appeals.

Cokinos Bosien is represented by Jeffrey S. Levinger and J. Carl Cecere of Levinger PC and Dale Jefferson and Michael Watson of Martin Disiere Jefferson & Wisdom LLP.

Moore's estate is represented by Michael L. Jones of Henry & Jones LLP and David W. Shuford of Shuford Law Firm.

The case is Cokinos Bosien & Young v. Shelia D. Moore, as independent executor of the estate of Eugene H. Moore, case number 05-18-01340-CV, in the Texas Court of Appeals for the Fifth District.

--Editing by Jack Karp.