



Bracewell Atty's Lie To Judge Sinks Drilling Patent Case

By Jeremy Heallen

Law360, Houston (August 26, 2014, 7:34 PM ET) -- A Texas federal judge on Monday threw out a patent infringement suit Tesco Corp. was pursuing against National Oilwell Varco LP and other oilfield service companies after finding that a Bracewell & Giuliani LLP attorney misled the court about potentially damaging evidence.

U.S. District Judge Keith P. Ellison dismissed Tesco's suit with prejudice, calling Bracewell & Giuliani partner Glenn A. Ballard Jr.'s mischaracterization of crucial witness testimony that hurt Tesco's case "an affront to this court, to the other parties and to judicial integrity.

"Such misrepresentations irrevocably poisoned these proceedings, and could not have been calculated to assist the court in the administration of justice, but only to win an advantage," Judge Ellison said in an order dismissing the case. "Accordingly, the court reluctantly concludes that Tesco's representations amount to an abuse of the judicial system; they are most certainly 'acts which degrade the judicial system.'"

A Bracewell & Giuliani spokesperson said Tuesday that the firm had received a copy of Judge Ellison's order but that it would be "inappropriate to comment on a pending matter."

The underlying lawsuit revolves around a casing drive system used in the oil industry to pick up, rotate and run casing in oil wells. Tesco alleged when it filed the infringement suit in 2008 that it has held patents on the system since as early as 2006.

But when the case went to trial in 2010, Kevin Nikiforuk, who created the casing drive system, testified "to the surprise of all present" that a marketing brochure developed by Tesco in August 2002 contained a depiction of his invention, according to the order.

Because federal law prohibits patenting an invention that has been on the market for a year or more, Nikiforuk's testimony, if true, "could easily have been the fulcrum in the trial, leading to a prompt dismissal of all of Tesco's claims," Judge Ellison said.

Judge Ellison granted a brief recess so Tesco's legal team could investigate Nikiforuk's claim and when trial resumed the following Monday, Ballard told the court that he had contacted

the brochure's animator, who "unequivocally" stated that Tesco's casing drive system was not what was pictured in the marketing material, the order says.

The trial continued and jurors rendered a verdict in favor of some of Tesco's claims, but Judge Ellison refused to enter a final judgment due to "inconsistencies" in the jury's decision. Judge Ellison says he was also concerned about National Oilwell Varco's claim that Tesco had failed to produce the marketing brochure during pre-trial discovery.

To remedy the dispute over the brochure, Judge Ellison allowed attorneys for the oilfield defendants to conduct limited post-trial discovery and take the deposition of Dan Karr, the brochure animator Ballard had spoken with during trial, according to the order.

That's when Ballard's alleged deceit came to light. Karr testified that he couldn't identify what was shown in the brochure because he had not been involved with creating the pamphlet, the order says.

"The testimony reveals that this is not a simple case of innocent mischaracterization. Mr. Karr said one thing, and counsel told the court that he said something else," the order said. "Such willfulness compels a finding of bad faith."

Judge Ellison added that although he was "entirely confident" that Ballard's alleged misrepresentations were out of character, they had "costly ramifications" to the court and defendants and that Tesco's case had to be dismissed as a consequence. Judge Ellison also left open the possibility that he would award attorneys' fees against Tesco.

"[N]ot every lawyer who lies to a court will be caught, so when such deliberate and advantage-seeking untruthful conduct is uncovered, the penalty must be severe enough to act as a deterrent," the order said.

The patents-in-suit are U.S. Patent No. 7,140,443 and one claim within U.S. Patent No. 7,377,324.

Tesco is represented by Glenn A. Ballard Jr. and John F. Luman III of Bracewell & Giuliani LLP.

National Oilwell Varco is represented by John W. Raley III, Robert M. Bowick and Bradford T. Laney of Raley & Bowick LLP. Offshore Energy is represented by C. James Bushman of Bushman & Associates PC. Frank's is represented by Lester L. Hewitt, David R. Clonts, Sarah J. Ring, Jamie L. Duncan III and Michael F. Reeder II of Akin Gump Strauss Hauer & Feld LLP.

The case is Tesco Corp. v. Weatherford International Inc. et al., case number 4:08-cv-02531, in the U.S. District Court for the Southern District of Texas.