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Jury Slams DLA Piper With \$1.3M Negligence Verdict

By **Carolina Bolado**

Law360, New York (February 28, 2012, 10:04 PM ET) -- The former majority shareholder of defunct security technology company IdentiPHI Inc. won a \$1.29 million jury verdict Thursday against DLA Piper, whose allegedly negligent advice on a bridge loan to the company left him with an unsecured claim and little hope of recovery in IdentiPHI's subsequent bankruptcy.

A jury in Austin, Texas, found DLA Piper 90 percent responsible for plaintiff Chris Linegar's loss of about \$1.7 million he had loaned to IdentiPHI from his personal accounts. Though Linegar had requested that the loan be secured, he said, DLA Piper failed to perfect the security interest in the loan, leaving him with a large unsecured claim in the 2009 Chapter 11 proceedings.

Linegar, an Australian citizen, sued DLA Piper and attorney Michael Hutchings in 2010, alleging fraud, professional negligence, breach of fiduciary duty, negligent misrepresentation and failure to warn, among other causes of action. He said the law firm failed to tell him that it only represented IdentiPHI and not Linegar personally.

His association with DLA Piper began in 2008, when the firm represented Saflink Corp. in a merger with IdentiPHI, according to the complaint. Both of the companies were involved in the high-tech security identification industry, such as retina recognition and fingerprinting technology, the suit said.

The transaction yielded a publicly traded IdentiPHI with Linegar as the major shareholder, which was his first time controlling a publicly traded company, he said.

Shortly after the merger was complete, the IdentiPHI CEO asked Linegar to provide the company with a short-term bridge loan, according to the complaint. Linegar said the money had come from his superannuation fund — a type of Australian retirement fund — and had to be repaid by June 30, 2008, in order to comply with Australian tax law.

DLA Piper drew up the papers for the loan without contacting Linegar's personal attorney and failed to perform a conflict check, the suit claimed.

"DLA Piper was already representing the corporation and, at the same time, preparing loan documents for an adverse transaction with the largest single shareholder, while simultaneously representing the same shareholder and advising him on SEC matters in his individual capacity," Linegar said.

In addition, despite Linegar's request that the loan be secured, the firm failed to file a UCC-1 financing statement, which left the security interest subject to attack in bankruptcy,

according to the suit.

By February 2009, when IdentiPHI filed for Chapter 11 protection, Linegar had extended about \$1.7 million in credit to the company, he claimed. Linegar became the company's largest unsecured creditor, followed by DLA Piper with a \$690,000 claim for legal fees, the suit said.

The move benefited DLA Piper because had the loan been secured properly, it likely would not have recovered as much of the fees, according to Linegar's attorney Jeffrey Taylor of The Akin Law Firm LLC.

"This verdict ought to serve as a reminder to all corporate lawyers to make it crystal clear who they represent, especially when dealing with the constituents of a company they represent," Taylor said. "Even a lay person with extensive business experience can reasonably believe the company lawyer is acting on his individual behalf."

The intellectual property assets of the company sold for \$2.3 million — more than enough to pay Linegar in full had the loan been drafted properly, the suit said.

An attorney for DLA Piper could not immediately be reached for comment Tuesday.

Linegar is represented by Jeffrey S. Taylor of The Akin Law Firm LLC and Donald R. Taylor and Jennifer A. Tatum of Taylor Dunham LLP.

DLA Piper is represented by Fields Alexander and Geoff Gannaway of Beck Redden & Secrest LLP.

The case is Key Ovation LLC et al. v. DLA Piper US LLP et al., case number D-1-GN-10-000789, in the District Court for the 201st Judicial District in Travis County, Texas.

--Editing by Elizabeth Bowen.

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