

BMC Software Awarded Historic \$1.6 Billion in Damages in Suit Against IBM

News Release

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HOUSTON – Bracewell LLP obtained a landmark victory on behalf of BMC Software, Inc. in its lawsuit against IBM for fraudulently inducing and then violating a software licensing agreement.

On May 30, 2022, following a two-week bench trial, U.S. District Judge Gray H. Miller for the Southern District of Texas found that IBM had committed fraud and breached its contract with BMC. Judge Miller awarded BMC over \$1.6 billion in damages, including \$717 million in actual damages, \$168 million in interest and \$717 million in punitive damages.

The sweeping award reflects Judge Miller’s assessment that IBM fraudulently induced BMC to sign the 2015 licensing agreement “with no intention whatsoever of performing thereunder” in order to “exercise rights [to use BMC’s proprietary software] without paying for them, secure other contractual benefits, and ultimately acquire one of BMC’s core customers.”

Because BMC and IBM are competitors in the mainframe software space, the licensing agreement granted limited rights for IBM to access and use BMC software when acting as an IT outsourcer to BMC’s software customers. Importantly, that agreement expressly prohibited IBM from displacing BMC software with IBM software at certain customers, including AT&T, one of BMC’s largest mainframe customers, unless IBM first purchased BMC licenses.

The evidence at trial showed that in order to avoid paying BMC the required license fees, IBM decided to disregard IBM’s contractual obligations and undertake a complete replacement of BMC’s software products at AT&T as part of a secret project, expecting that if challenged it could settle for “pennies on the dollar.”

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Judge Miller wrote, “IBM never intended to (and never did) pay for the right to displace. IBM’s scheme to defeat BMC’s contractual rights cheated BMC—a software company wholly dependent on the licensing of its intellectual property—out of hundreds of millions of dollars it was entitled to receive under the contract in exchange for the rights IBM exercised.”

Judge Miller found that IBM’s conduct was “both fraudulent and malicious” and in “bad faith.” In explaining his punitive damages award, Judge Miller noted that “IBM’s conduct vis-à-vis BMC offends the sense of justice and propriety the public expects from American businesses.”

Patrick Tagtow, Sr. Vice President and General Counsel at BMC, said of Bracewell: “The Bracewell team brought consistent professionalism, deep skills and excellent performance into this five-year litigation against a much larger and well-resourced opponent. Together with the BMC legal team, through integrity, focus, and precision, they made certain that the facts stood out and the truth prevailed. Our decision to partner with Bracewell on this important case directly led to this fantastic outcome.”

Additional Resources:

[Finding of Fact and Conclusions of Law: BMC Software, Inc. v. International Business Machines Corporation](#)

[Final Judgment: BMC Software, Inc. v. International Business Machines Corporation](#)