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texaslawyer.com | August 9, 2022

\$21M in Attorney Fees and Costs After Bracewell Lawyers Win Against IBM

BY ADOLFO PESQUERA

Bracewell attorneys were awarded over \$21 million in fees and costs on behalf of BMC Software Inc., in connection to a \$1.6 billion judgment against IBM for fraudulent inducement and violation of a licensing agreement.

U.S. District Judge Gray H. Miller for the Southern District of Texas found that, as the prevailing party, BMC was entitled to recover legal fees and costs of \$21,615,144 for the “extraordinary result” of the Bracewell team.

“The parties zealously litigated this matter at every stage, resulting in extensive discovery, protracted discovery disputes, and substantial motion practice that culminated in two weeks of trial,” Miller wrote in his order delivered Monday.

At conclusion of the bench trial on May 30, Miller awarded \$1,603,705,597 in damages; the award was comprised of \$717 million in actual damages, \$168 million in interest, and \$717 million in punitive damages.

The sweeping award reflected Judge Miller’s assessment that IBM fraudulently induced BMC to sign the 2015 software licensing agreement “with no intention whatsoever of performing thereunder” in order to “exercise rights [to use BMC’s



Courtesy photos

Chris Dodson (left) and Sean Gorman, business litigators at Bracewell.

proprietary software] without paying for them, secure other contractual benefits, and ultimately acquire one of BMC’s core customers.”

‘Well-Funded, Intense and Aggressive’

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.

However, the 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.

Trial evidence showed that to avoid paying BMC the required license fees, IBM decided to disre-

gard its 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.”

Sean Gorman led the Bracewell team, along with Christopher L. Dodson. Other members of the trial team included Andrew W. Zeve, Jeff Oldham, Timothy R. Geiger, Jeremy Dunbar, Kyle A. Mason, Drewe C. Molin, Matthew J. Reasoner, Walter A. Simons and Cole A. Thoms.

“We took this case to trial with confidence in our team and in our case. This significant award of fees and costs underscores our success for BMC against a well-funded, intense and aggressive defendant,” Gorman said.