

“Death Penalty Sanctions” Granted

MAY 26, 2021

On May 20, 2021, Judge Alan Albright issued a written order granting plaintiff Performance Chemical Company’s (PCC) Motion for Sanctions for True Chem’s concealment of vital evidence. The court had already cancelled the pending trial and ordered a temporary injunction against True Chem following the parties’ oral arguments on March 26, 2021.

The key issue throughout this patent infringement litigation was whether True Chem automated its frac trailers. Judge Albright recounted True Chem’s numerous deliberate attempts to hide material evidence of automation. For example, after “a *specific* mandate from the Court to provide a complete frac trailer for inspection,” PCC unbolted and removed the key piece of automation equipment from a trailer, a task that “would require considerable effort,” so that it would not be available for inspection by PCC. Further, “True Chem’s employees —no other phrase encapsulates it—*lied under oath* when asked direct questions about automation.” The court also noted that True Chem filed a declaratory judgment action alleging non-infringement without reviewing its own documents. Thus, the court concluded that True Chem acted deliberately and in bad faith, and turned to the question of what sanctions to apply.

PCC had asked the court for “death penalty sanctions,” an entry of default judgment. The three prongs necessary for an entry of default judgment—that the misconduct be attributable to the client instead of the attorney, that the misconduct cause substantial prejudice, and that less drastic sanctions would not be appropriate—were all met here. Notably, in finding that the court could only adequately sanction True Chem’s behavior with a death penalty sanction, Judge Albright stated that “[a]nything less than this most extreme sanction would not provide sufficient deterrence from similar behavior in other cases.”

The court ordered that True Chem’s non-infringement defense and invalidity counterclaims be stricken, found that True Chem has willfully infringed, and ordered that True Chem be permanently enjoined and that PCC be awarded attorneys’ fees. The court will hold a trial solely on the question of damages on July 19, 2021, but given that PCC already successfully struck True Chem’s damages expert, PCC’s expert will be the only witness at trial.

This is not the first time Judge Albright has awarded sanctions. In *De La Vega v. Microsoft Corp.*, No. W-19-CV-00612-ADA (W.D. Tex. Feb. 24, 2020), after the court granted defendants’ motion to dismiss *with* prejudice at oral argument, but before a written order issued, the plaintiff moved to voluntarily dismiss the case *without* prejudice

with hopes of re-filing the complaint. To sanction this improper attempt to circumvent the court's dismissal of the case, Judge Albright ordered attorneys' fees and prohibited all attorneys from the plaintiff's law firm from filing anything on the WDTX docket until the sanctioned attorney completed ten hours of legal ethics courses. Indeed, to advance the deterrent of such sanctions, Judge Albright has brought up his award of death penalty sanctions in other discovery disputes to advise parties to take discovery obligations seriously.

The case is *Performance Chemical Company v. True Chemical Solutions, LLC* WDTX-6-21-cv-00222.

2 Min Read

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