

Helicopter Helmet Co. Has To Pay Rival's Bill For Antitrust Suit

By Alyssa Aquino

Law360 (April 14, 2021, 9:42 PM EDT) -- A company that sells gear for helicopter pilots has to pick up its rival's legal tab for its suit alleging anti-competitive behavior, after a Pennsylvania federal court said the antitrust lawsuits were barred by an earlier settlement agreement.

The 2015 settlement that ended a trademark suit between Helicopter Helmet LLC and Gentex Corp. barred any of Helicopter Helmet's claims "in any way related to" that case, including the antitrust claims Helicopter Helmet threatened to lob against Gentex throughout it, U.S. District Judge Matthew Brann found Tuesday.

He said the settlement's "related to" language cast a wide net over the released claims and "is much broader than Helicopter Helmet seems to acknowledge." Under those terms, the fact that Helicopter Helmet pursued antitrust claims considered throughout the trademark suit was "enough to find that the antitrust lawsuits and the trademark suit are in some way related," Judge Brann said.

In 2012, Gentex sued Helicopter Helmet for trademark infringement, and the two settled in 2015. Two years later, Helicopter Helmet filed two cases against Gentex and Gentex's distributor, Gibson & Barnes, accusing them of forcing Helicopter Helmet to shut down facilities and undergo a corporate restructuring by allegedly convincing government agencies that its products were unsafe.

The litigation ended in July 2019, with Helicopter Helmet voluntarily withdrawing one case and a federal court dismissing the other. The Third Circuit **upheld the dismissal order**, according to the complaint.

The complaints made references to white papers issued by Gibson & Barnes regarding counterfeit helmets, as well as safety alerts and accident-prevention bulletins. But all those documents were previously discussed during the trademark case, further showing that the antitrust and trademark suits were related, Judge Brann said.

The judge granted Gentex summary judgment over the breach of contract claim — the sole remaining claim in this latest bout of litigation with Helicopter Helmet — and ordered Helicopter Helmet to repay Gentex's \$60,000 bill for defending against the twin antitrust suits.

According to the decision, Helicopter Helmet had refuted Gentex's bid for attorney fees by citing a Pennsylvania general rule saying that parties bear their own costs in breach of contract suits. But Judge Brann pointed out that Gentex wasn't seeking to recoup the costs of the breach of contract case, rather its costs for the antitrust suits.

"Gentex was hailed into court in multiple forums and was forced to defend itself," Judge Brann said. "The fact that Gentex's counsel was able to minimize the cost to their client ... should not erase the very real expenses of the litigation that were incurred."

"To hold otherwise would create an inequitable outcome, where one party could breach the release clause in a settlement, file wholly meritless lawsuits which would eventually be exposed as such, and the nonbreaching party could be left without some recourse or method to recover the costs it suffered," he said.

Representatives for both parties didn't immediately respond to Wednesday requests for comment.

Gentex is represented by Daniel T. Brier and Donna A. Walsh of Myers Brier & Kelly LLP.

Helicopter Helmets is represented by Joseph Orso III of Rudinski Orso & Lynch.

The case is Gentex v. Helicopter Helmets, case number 4:17-cv-01136, in the U.S. District Court for the Middle District of Pennsylvania.

--Additional reporting by Anne Cullen. Editing by Adam LoBelia.