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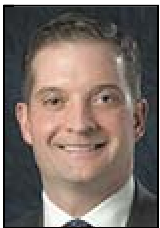
Dunn: Indiana law, precedent lead to $2.6M settlement for sales rep

March 22, 2017



Dunn

By Stephen Dunn

This article summarizes how a terminated commissioned sales representative achieved a settlement of over $2.6 million from an Indiana company.

"Larry" and "George" entered into a contract pursuant to which Larry would receive commissions on all sales made for George's company. The 13-page, fully-integrated contract contained only one sentence describing Larry's performance obligations: that Larry "at his own expense, vigorously promote the sale of and stimulate demand for the wheel coatings of [Company] by direct marketing and by direct solicitation." The agreement does not define or otherwise quantify the terms "vigorously promote," "direct marketing" and "direct solicitation." The contract also provided for the application of Indiana law, venue for disputes in Indiana and the recovery of the prevailing party's attorney fees.

Larry made thousands of phone calls, sent countless email messages, participated in dozens of meetings and appeared at trade shows. Larry's efforts produced tremendous results for George, as original equipment manufacturers and their tiered suppliers submitted numerous requests for quotations and program award commitment letters. Larry even landed, for George's small Indiana startup company, the major pickup truck program for one of the Detroit Three OEMs — resulting in millions of dollars of new sales to George.

As Larry secured more business for the company, his sales commission payments increased as well. Larry, who initially earned around $100,000 per year, earned around $200,000 in 2014 and nearly $900,000 in 2015. Larry's 2016 commissions were projected to exceed $100,000 per month.

Shortly after the parties signed another extension of Larry's contract, George sold about 60 percent of the company to a private equity firm. The private equity firm reviewed the company's financials and identified Larry's sales commission payments as problematic.

To save money, the Company terminated Larry and sued in the Northern District of Indiana both Larry personally and the entity through which Larry conducted business for the company. Basically, the company's suit alleged that somehow Larry had breached the contract by refusing to perform certain additional purported "duties" not contained in the contract.

Later that same day, before company served Larry with its pre-emptive lawsuit, we filed our lawsuit in

the same court on behalf of Larry's entity against the Company, alleging breach of contract and violation of the Indiana Sales Representative Act, IC §24-4-7-5, which provides for the recovery of treble damages and attorney fees. Moreover, my research revealed the Indiana Supreme Court's pivotal decision in *Andrews v. Mor/Ryde Int'l, Inc.*, 10 N.E.3d 502 (Ind. 2014), in which the court held that Indiana's punitive damages cap does not apply to damages awarded under the Indiana Sales Representative Act.

The case proceeded through discovery. We eventually uncovered evidence such as this email from the private equity firm's leadership:

"I will tell you that I believe the contract in place with [Larry] is such a bad contract for the Company (gives one guy all major OEMs, Major Transplants, … Tier 1 and Tier 2 providers, and can't be cancelled except for cause) that I have recommended to [private-equity firm owner] that rather than negotiate to something 'less terrible' we need to try to get out of this contract … I think we need to fix it now rather than trying to get through the next 4 years (6 including contract tail) with a crappy agreement with [Larry]."

After I deposed the company's Rule 30(b)(6) designees, including a member of the private equity firm's leadership who drafted the email above referencing the "crappy agreement with [Larry]," the company's lawyers approached settlement discussions in a serious manner. We resolved the case with the company agreeing to make payments to Larry's entity of more than $2.6 million.

The outcome of commissioned sales representative disputes depends on the strength of the parties' agreement, the plaintiff's attorney's persistence in discovery, and skill and tenacity generally. Larry received a large settlement because he had a strong written contract, and because, with persistence, we pulled out of the company, the private equity firm, and their respective attorneys incredibly helpful evidence that served as an indictment of the company and its private equity firm leaders that they terminated Larry not because he breached the contract or failed to do anything required of him under it — but only to try to save money. The friendly language in the Indiana Sales Commission Representative Act and the court's decision in *Andrews* didn't hurt, either.•

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