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Big sanctions, then a big verdict

Defendant hit with \$500,000 scolding, then \$30 million verdict.

After being slapped with \$500,000 in sanctions for allegedly destroying evidence, a California forklift dealership has been hit with a \$30 million judgment over unpaid loans owed to Mitsubishi Caterpillar Forklift America.

A federal jury issued the judgment recently against the now-defunct Power Lift Corp. and its owner, Clyde Richard Cowan, who, according to court documents, was sanctioned twice this year for allegedly destroying evidence; once for \$250,000, and a second time for the same amount.

"There is no excuse for his misconduct," wrote Federal Discovery Master Edward Wallin, a retired California Court of Appeal judge who issued the sanctions in January and March. "C. Richard Cowan intentionally accessed and deleted directories and files from Power Lift's computer system both before and around the time of his termination."

Mitsubishi's lawyer, Jim Mahacek, alleged that Cowan destroyed computer evidence, falsified books and created phony accounting methods while he forced Power Lift into bankruptcy.

Mahacek said he hired forensic computer experts who found that Cowan allegedly deleted crucial company records from his personal computer at home. He said the \$30 million judgment has a larger message to corporate executives.

"I think that the judges are trying to send a signal: If you don't knock this off, people, we're going to make you suffer," he said.

Attorney Thomas Robins, Cowan's lawyer, denies any wrongdoing by his client and is considering an appeal.

"Richard didn't try to get away with a damn thing," said Robins of Frandzel Robins Bloom & Csato of Los Angeles. "That guy put eight to nine years of his life in that business...and the courts found that there was nothing that Power Lift could have done to save the business."

If he appeals, Robins said, "we're going to basically show to the court that not a nickel went out of Power Lift that should not have gone out of Power Lift."

A soured relationship

Lawyers from both sides said the relationship between Mitsubishi and Power Lift soured in 1997, four years after they forged a deal whereby Power Lift would sell Mitsubishi's forklifts in Los Angeles. For the first four years of operations, Houston-based Mitsubishi agreed to let Power Lift have the forklifts, with expectations that it would repay the company when it started making money.

But Mahacek of Callahan & Blaine in Santa Ana, Calif., alleges that, in 1997, Cowan signed several loan agreements promising to pay Mitsubishi back for start-up costs and equipment.

But Robins claims that Mitsubishi induced Cowan to sign the loan documents because of promises made in a side-letter agreement in which Mitsubishi promised various incentives and additional discounts should sales not go as expected. He claims that Mitsubishi breached that side-letter agreement.

"The court found that Richard signed the documents with his eyes wide open, but we did claim that [Mitsubishi] had no present intent to fulfill the obligations," Robins said.

Mahacek alleged that Cowan and his brother, attorney Josef Cowan, knowingly sank Power Lift into bankruptcy. According to court records, Josef Cowan was sanctioned for \$25,000 in March for allegedly destroying documents. Josef Cowan, a solo practitioner in Anaheim, Calif., couldn't be reached for comment.

According to court documents, on Sept. 23, 2002, a bankruptcy court judge terminated Cowan's role as president of Power Lift after Mitsubishi accused him of fraud and gross mismanagement.

Cowan was replaced with a trustee and ordered to vacate the company's premises immediately, records show. Mahacek alleges that on that day, Cowan went home, hacked into Power Lift's computer system and deleted financial records that allegedly showed he was stealing money.

But Robins strongly denies the allegation, contending that Cowan deleted only personal files, such as e-mails and old college correspondence.

"None of the stuff that Richard deleted had anything to do with the financial books of the company," Robins said. "There was no hacking in or anything like that...Almost all of it was his personal stuff." *Mitsubishi v. Power Lift*, No. SACV01-815DOC (C.D. Calif.).



JIM MAHACEK: The lawyer for Mitsubishi asserts that the jury was sending corporate execs a message.

By Tresa Baldas
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