

Milberg Clients Urge 2nd Circ. To OK Axing \$12M Fee Suit

By **Emily Lever**

Law360 (October 28, 2020, 6:36 PM EDT) -- Former Milberg LLP clients told the Second Circuit that a lower court was right to toss the firm's suit seeking to recoup close to \$12 million in fees it believes it is owed, saying the firm lacked standing and the claim is time-barred.

A New York federal court had tossed Milberg's suit to vacate a previous arbitration awarding it only a fraction of the \$11.9 million contingency fee it had demanded from the settlement of a suit over Argentine bonds. Milberg is appealing the decision, but its former clients said in a brief filed Tuesday that the suit should stay dead.

"The case, despite the long history and despite the amount of paper that's been filed on it, has been fairly simple and that's especially true in the post-trial phase," Jay Auslander, the attorney for Milberg's former clients, told Law360. "They blew it."

Over the course of several rounds of dismissals and amendments, Milberg made contradictory statements about the citizenship of the company and its partners, the ex-clients said. The Southern District of New York was right to find that Milberg failed to establish diversity jurisdiction and so blew its chance to have the case heard in federal court, the brief said.

"The district court gave Milberg three different opportunities to file a petition that properly alleged jurisdiction and it failed to do so in even one of them," Auslander told Law360. "The standards are clear as day; they should have been there in the first petition."

The former clients also said Milberg missed the three-month deadline to serve papers disputing an arbitration award and is trying to weasel its way out of an "absolute, unequivocal" deadline in several ways, including by claiming that serving papers to respondents overseas takes longer and warrants an exception.

"Milberg fails to cite any case holding that any 'foreign respondent' exception to the three-month limitation period exists — because there is none," the brief said.

Milberg claimed international service through the Hague Convention protocol would have been impossible to complete in three months, but the firm could have sought a court order to use a faster, alternative means of service, which it did not do until time had already run out, the brief said.

The arbitration panel rendered its decision on Feb. 5, 2019, so the deadline to serve a motion to vacate was May 5, but Milberg waited until May 6, when its time was already up, to ask the former clients' counsel whether they could accept service on their behalf, the brief said.

"That's why the district court dismissed their pleading with prejudice: what's done is done," Auslander said. "And despite three opportunities to plead diversity, they blew that too. That ends it."

Milberg, which has since merged with Sanders Phillips Grossman LLC to become Milberg Phillips Grossman LLP, was retained by 10 Luxembourg and German retirement funds and two German individuals in their suit for recovery on defaulted Argentine bonds.

Milberg got its clients a \$162.5 million settlement offer from Argentina, but the clients dropped the firm in 2016 and hired new counsel that settled for a hair less at \$162.3 million, according to court filings.

Milberg initiated arbitration in 2017 to get contingency fees for its work on the case, but the panel awarded the firm only a fraction. Milberg then turned to the courts in May 2019, asking that the panel's decision be vacated, and saw the Southern District of New York dismiss its case.

Of Milberg's motion to vacate and subsequent appeal, Auslander said, "It was the kind of effort to gain an outsized fee for very little work done that makes non-lawyers raise an eyebrow."

Neither party was immediately available for comment Wednesday.

Milberg is represented by William Dahill of Dunnington Bartholow & Miller LLP.

The former clients are represented by Jay S. Auslander, Julie Cilia and Scott Watnik of Wilk Auslander LLP.

The case is Milberg LLP v. Drawrah Limited et al., case number 20-2500-cv, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Elise Hansen. Editing by Marygrace Murphy.