

Milberg's \$12M Fee Suit Tossed For Jurisdiction Flaws

By **Elise Hansen**

Law360 (July 8, 2020, 9:10 PM EDT) -- The remnants of Milberg LLP can't recoup close to \$12 million in fees it believes it is owed by former clients because it didn't show the court has jurisdiction over the dispute, a New York federal judge said Wednesday.

Milberg LLP, which has since paired with Sanders Phillips Grossman LLC to become Milberg Phillips Grossman LLP, didn't adequately prove the case could be heard by a New York federal court, U.S. District Judge Analisa Torres found. Milberg was pushing the court to vacate an arbitration award that found the firm was entitled to only a fraction of the \$11.9 million in contingency fees it believed it had earned in a suit over defaulted Argentine bonds.

Milberg argued that it was a New York limited liability partnership and that all of its partners were citizens of a U.S. state "at all times relevant to this petition." But it didn't specify that all of its partners were citizens of a U.S. state when it filed the suit, the order said.

"If any of [Milberg's] partners are not citizens of the United States within the meaning of the diversity statute, diversity jurisdiction is destroyed," the order said.

Milberg's of counsel submitted a declaration asserting that Milberg LLP's two partners **were citizens of U.S. states** when the suit began, but that's not enough, the court found.

"The declaration does not indicate whether the statements regarding the citizenship of [Milberg's] partners at the time of the commencement of the action ... were made on the basis of [its counsel's] personal knowledge," Judge Torres said.

"Because the petition fails to adequately plead diversity citizenship and the [counsel's] declaration does not indicate a basis in personal knowledge, the court concludes that [Milberg] has not carried its burden of establishing diversity jurisdiction," Judge Torres said.

Milberg **filed suit** in May 2019, asking the court to overturn an arbitration panel's decision about its right to contingency fees. The firm had represented 10 Luxembourg and German retirement funds and two German individuals in their suit for recovery on defaulted Argentine bonds.

The clients stopped working with Milberg in 2016 and hired another firm, then ultimately settled the dispute with Argentina for \$162.3 million — very close to the \$162.5 million settlement offer Milberg

had gotten for them before it was discharged, according to court documents. The clients didn't pay Milberg contingency fees, the filings said.

Milberg initiated arbitration in 2017, but the panel ultimately refused to award the firm any additional fees. Milberg then turned to the courts in May 2019, asking that the panel's decision be vacated.

Wednesday's decision definitively dismissed the case.

"Because amendment would be futile, dismissal is with prejudice," the clerk's order, also filed Wednesday, said.

Jay Auslander of Wilk Auslander LLP, who represented Milberg's former clients, told Law360 the ruling was justified.

"We're grateful that the court accepted our arguments, which are fully supported by the record and the papers submitted on the motion," he said.

Counsel for Milberg did not immediately respond to requests 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 Ltd. et al., case number 1:19-cv-04058, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Kevin Penton. Editing by Daniel King.