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Insurers Ask 9th Circ. To Let Them Claim Bratz Legal Fees

By **Bibeka Shrestha**

Law360, New York (July 16, 2012, 9:10 PM ET) -- Four insurers fighting for a chunk of MGA Entertainment Inc.'s \$140 million attorneys' fees and costs award told the Ninth Circuit on Friday they should have been allowed to jump into MGA's trade secrets and employment contract battle with Mattel Inc. over Bratz dolls because their request was timely.

Crum & Forster Specialty Insurance Co., National Union Fire Insurance Co. of Pittsburgh, Pa., Lexington Insurance Co. and Chartis Specialty Insurance Co. asked to intervene in the protracted secrets contract dispute 22 days after final judgment and 15 days after Mattel appealed, according to Mattel's brief.

Challenging a California federal court's ruling that they had waited too long to intervene in the protracted trade secrets and contract dispute, the insurers argued Friday that MGA and Mattel never had shown that they were prejudiced by the timing of their motion — a critical question that went unaddressed by the lower court, the insurers said.

"The insurers assuaged any potential concerns by representing to the district court that they did not seek additional discovery or to reopen decided issues," the insurers said in their brief. "The insurers sought to intervene for the limited purpose of protecting their interest in the fee award."

MGA's insurers — who say they've shelled out \$80 million to defend MGA in the Bratz litigation — moreover argue that they didn't have a real, protectable interest until after the district court had made its award.

They also insist that they did not realize that MGA refused to protect their interests in the fees award until the lower court held oral arguments on the attorneys' fees motions.

"The record is devoid of any evidence demonstrating that MGA gave the insurers any indication prior to oral argument that that it was MGA's position that the insurers were not entitled to any fees awarded, despite the fact that the insurers had been defending MGA for years and paid tens of millions of dollars," the brief said. "Thus, intervention appeared unnecessary before the hearing on the attorneys' fees motions."

Not waiting for the Ninth Circuit's ruling on their appeal, the four insurance companies already have launched a suit against MGA seeking reimbursement of defense costs. Fellow MGA insurer Evanston Insurance Co. followed suit and filed a separate complaint on June 29 to recover part of the nearly \$108 million in attorneys' fees and \$32 million in costs awarded to MGA.

Attorneys for the insurers and Mattel declined to comment, while representatives for MGA were not immediately available Monday.

The underlying fight between Mattel and MGA turned on whether toy designer Carter Bryant invented Bratz while working at Mattel and subsequently brought the idea to MGA, or whether he came up with the idea for the dolls in 1998 before he signed a contract with Mattel.

After years of litigation, Mattel won a \$100 million jury verdict against MGA in California federal court in August 2008. The jury ruled that MGA, an upstart toy company, effectively stole the idea

for Bratz when it hired Bryant.

But in July 2010, the Ninth Circuit struck down major portions of that outcome, and in October 2010, it declined to rehear the case, setting the stage for a jury retrial in the lower court.

In April 2011, the new jury found that Mattel had misappropriated Bratz trade secrets, and in August, a judge awarded MGA roughly \$108 million in attorneys' fees, \$32 million in costs, \$85 million in exemplary damages and \$85 million in damages.

The insurers are represented by Mark Sheridan and Mark Errico of Patton Boggs LLP and Susan Field and Jennifer Kokes of Musick Peeler & Garrett LLP.

MGA is represented by Michael Bidart and Ricardo Echeverria of Schernoff Bidart Echeverria LLP and Jeffrey Ehrlich of The Ehrlich Law Firm.

Mattel is represented by Ryan Baker of Baker Marquart LLP.

The case is Carter Bryant et al. v. Mattel Inc. et al., case numbers 11-56868 and 11-56881, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Lana Birbrair, Ben James, Zach Winnick and Amanda Bransford. Editing by Richard McVay.

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