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Supra Telecom wants antitrust claims reinstated

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Supra Telecom of Miami is seeking reinstatement of antitrust claims in an ongoing federal court case against BellSouth (NYSE: BLS).

The claims had been dismissed in 2001 after the 7th Circuit ruled in a case involving Ameritech that the 1996 federal telecommunications act did not provide for antitrust action. However, another case in the 2nd Circuit involving Verizon Communications went the other way. The Supreme Court has accepted that case for review and could provide a definitive ruling.

Dozens of antitrust cases nationally are expected to proceed if the Supreme Court upholds the right of telecom newcomers, including Supra, to file antitrust actions against Verizon, Ameritech, BellSouth and other Baby Bells.

A filing by Supra indicates U.S. District Court Judge Kenneth A. Marra orally told the parties that the antitrust claim could be reinstated, but an order stating that had not been filed as of early this week.

Supra wants to split the case into two parts with the antitrust action following a fraud case in which Supra has alleged damages of up to $181.65 million. It was not immediately clear what damages might be sought in the antitrust case.

Case delayed six months

Marra has scheduled the fraud case for trial on Jan. 5, 2004, about six months later than previously planned. The judge's order did not explain the reason for the delay, but he has yet to rule on several motions and responses by both sides regarding

introduction of evidence and expert testimony.

For example, Supra wants to limit the testimony on behalf of BellSouth by William E. Taylor, senior VP of the telecommunications practice at National Economic Research Associates in Cambridge, Mass. Supra has said Taylor's testimony on some issues could amount to impermissible "legal opinion," but a filing by BellSouth says Supra's arguments are frivolous.Supra is apparently planning a change of lawyers in the district court case, which goes back to 1999.

The Miami law firm of Broad & Cassel has been retained as special counsel and "I think the expectation going forward is the Broad & Cassel firm would take the lead," Supra lawyer Michael Budwick, with Meland Budwick, P.A. said in bankruptcy court on Wednesday.

Supra's lead counsel in the case has been Mark Buechele of Miami Beach, but he has filed a claim for compensation in the bankruptcy court case. Budwick said Supra was reserving the right to reject part of Buechele's claim.

The amount of salary is not at issue, he said, but rather stock options and a contingency fee for representing Supra in the federal court case.

An attorney for BellSouth, Paul S. Singerman, with the Miami firm Berger Singerman, said an agreement shows Buechele was supposed to receive 150,000 shares of Supra by the end of 1999. He said that raises questions about Supra saying founder Olukayode A. Ramos is the sole owner of the company.

Bankruptcy court Judge Robert A. Mark said there may have been no misrepresentation, but rather a question of options versus ownership.

Buechele told the court his amended claim may answer some of the questions and the judge asked for a motion on the compensation issue to be put before the court by Aug. 15.

Litigation 'dragged into the gutter'

Singerman wants to depose Buechele in the bankruptcy court case and has asked for documents that Buechele says are protected by attorney-client privilege. Although the two sides appeared to be working the issue out in bankruptcy court on

Wednesday, it drew a sharp response in a June 11 filing by Buechele in the district court case.

“Since Berger Singerman entered into this case on or about April 15, 2003, the tone of litigation has been dragged into the gutter and dirty tricks abound,” the motion states.

Singerman “openly stated to Supra Telecom lawyers that his intention in taking the undersigned’s deposition was to preclude the undersigned from representing Supra Telecom in this litigation,” Buechele’s filing states. “An obviously dirty litigation tactic since the undersigned filed this case in 1999 and, except for a brief hiatus, has been lead counsel since then.”

“I will let my record and reputation after 19 years and 11 months of law practice in South Florida stand for itself and will not otherwise dignify Mr. Buechele’s outrageous and unwarranted allegations and accusations with any response,” Singerman said Tuesday when asked about the characterizations.

In the district court case, Supra is alleging that BellSouth committed civil fraud when it altered a business agreement without telling Supra and then submitted it to regulators in nine states.

BellSouth said the mistake was innocently made, no damages occurred and Supra’s experts arrived at the “staggering total amount of damages” using speculation and conjecture, a May 16 filing shows.

Awarding of substantial damages could be important to Supra’s survival. BellSouth has claimed Supra owes it up to $100 million. Although Supra disputes it owes that much, an award in the district court case would help offset the final amount and aid efforts to get out of Chapter 11.