

Third Circuit Rules That Carter Ledyard Merits Fee Award For Successfully Voiding Illegal CEO Indemnification

June 10, 2020

In a 29 page precedential decision, the Third Circuit Court of Appeals ruled that Carter Ledyard and its client D. David Cohen are entitled to an award of attorneys fees and costs based on their successful appeal a decade ago in *Cohen v. Viray*, 622 F.3d 188 (2d Cir. 2010). In that landmark case, Cohen, represented by Carter Ledyard, overturned the settlement of a shareholders derivative suit, arguing that the settlement's indemnification of the public company's former CEO from his \$186 million liability under Section 304 of the Sarbanes Oxley Act ("SOX 304") violated public policy. In its June 4 decision, the Third Circuit ruled that the Delaware bankruptcy court erred in 2015 when it ruled that Carter Ledyard and Cohen could recover fees only if the Debtor actually received funds from the SEC's SOX 304 claim. Highlighting the numerous ways in which Carter Ledyard had improved the settlement, the Court concluded that Carter Ledyard and Cohen were entitled to a fee award without any contingency. Last year another Third Circuit panel recognized that Cohen and Carter Ledyard "showed tremendous skill and expended substantial time in preserving a highly valuable claim."

The case will now be remanded for a determination of the appropriate amount of the fee award. Cohen and Carter Ledyard were represented by Gary D. Sesser, Leonardo Trivigno, and William F. Sondericker. Mr. Sesser argued the appeal as well as the 2010 appeal in *Cohen v. Viray*.

In re S.S. Body Armor I Inc., (3d Cir., June 4, 2020).

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