

Latham & Watkins Secures \$666M Award for Client in Hewlett Packard Accounting Dispute

The U.S. District Court for the Southern District of New York has unsealed an award from a New York arbitration panel that directs Hewlett Packard Enterprise Inc. to pay \$666 million to a technology firm in a massive accounting dispute.

BY TOM MCPARLAND

THE SOUTHERN District has unsealed an award from a New York arbitration panel that directs Hewlett Packard Enterprise Inc. to pay \$666 million to a technology firm in a massive accounting dispute.

A spokesman for HP said the company would not challenge a motion by DXC Technology Co. and its Latham & Watkins attorneys to confirm the Aug. 15 award, filed Sept. 20 in Manhattan federal court. At the time, HPE announced the amount of the award, but the details of the case remained sealed until Friday.

The three-member arbitration panel found that HPE had breached an agreement to



HP World Headquarters.

indemnify DXC for hundreds of millions of dollars in capital lease liabilities HPE had transferred in connection with the 2017 spinoff of its enterprise services business. That unit merged with technology and professional services provider Computer Sciences Corp. to form DXC.

According to court documents, CSC discovered just days before the deal that HPE had failed to disclose more than \$1 billion in capital lease liabilities. In a last-minute effort to save the deal, HPE said it would convert the leases to operating leases under U.S. generally accepted accounting principles.

“CSC repeatedly sought information from HPE about its lease conversion methodology,” DXC said in last week’s filing. “But HPE shared very little information with CSC—and most of what it did share turned out to be false.”

According to DXC, HPE had failed to convert the modified leases under GAAP, sticking DXC with roughly \$1 billion in long-term capital lease liabilities over the \$250 million cap the parties had initially agreed to in entering the deal. DXC said HPE did not respond to further requests for information, and the firm initiated arbitration proceedings in March 2018.

In an 86-page award ruling, the arbitrators found that the key components of HPE’s lease conversion methodology violated GAAP and that nearly all of the disputed leases were capital leases, according to the motion.

The tech publication CRN Magazine reported last week that the decision was particularly critical of Hewlett Packard Financial Services Chief Financial Officer Ian Fowlis, who was found to have provided an expert with an altered financial document that was submitted as evidence and lacked candor in the proceedings.

The award directed HPE to pay approximately \$632 million in excess capital lease liabilities, pre-award interest of \$34 million and a 3% post-judgment interest, compounded quarterly from Aug. 15.

An attorney for HPE forwarded a request for comment to a company spokesman, who said HPE said it “strongly” disagreed with the panel’s finding.

In a statement, HPE said any characterizations that Fowlis or the company had acted improperly were “simply unfounded,” but did confirm that it would not oppose DXC’s motion to confirm the award.

“This was an accounting dispute, and we are happy to put this matter behind us now that it has been resolved,” HPE said.

Latham & Watkins partner Jamie Wine praised the ruling in a statement, saying the firm was happy to have secured the outcome for its client.

“We are pleased with the panel’s unanimous award finding in DXC’s favor and adopting DXC’s presentation of the facts in this matter,” Wine said.

DXC was represented by Wine, Abid Qureshi, Douglas Yatter, Hilary Mattis, Kuan Huang, Adam Shamah, Sid Nadkarni, Sindhu Boddu, Amella

Viso, Jaclyn Newman and Chase Chesser, all of Latham.

HPE was represented by Gibson, Dunn & Crutcher. The federal court docket listed litigation associate Amy Rublin Mayer as counsel.

The motion to confirm is currently before U.S. District Judge Valerie E. Caproni of the Southern District of New York.

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