

Suppliers more willing to sue automakers, analysts say

By **Terry Kosdrosky**

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A small technology company won an \$11.1 million arbitration decision against General Motors Corp. this month, an example of what auto supplier attorneys say is a growing boldness among their clients.

GM said it plans to appeal.

Vendors to automakers and large tier-one suppliers are more likely to sue, heartened by recent court successes, legal analysts say.

In the most recent case, Farmington Hills-based BuynSupply.Com Inc. accused GM of breaching its contract. BuynSupply, a startup owned by former GM engineer Frank Soares, agreed to produce a searchable, Web-based library of GM's tooling components.

The idea was that GM would provide access to its electronic library of assembly machine parts and BuynSupply would sell access to its site to tooling suppliers. Toolmakers then could use the files in their computer-aided designs of GM production equipment. The two parties signed a contract May 7, 2001.

But GM never provided access to its library and didn't live up to the cancellation terms in the contract, said Kenneth Neuman, a partner at Southfield-based Nathan, Neuman & Nathan P.C. Neuman argued the case along with John Hubbard, a partner at Farmington Hills-based Beals Hubbard P.C.

That effectively killed BuynSupply, Neuman said. The company filed suit in October 2001 in Wayne County Circuit Court.

"In classic GM fashion, they dismissed us as serfs, like we were unworthy of them abiding by their contract," Neuman said. "All GM needed to do was turn over the library and let us implement."

But GM said it had concerns about BuynSupply's ability to perform and its finances. Also, Soares had never run a commercial Internet company, according to GM's motion for summary disposition. BuynSupply was "on the verge of going out of business" in 2001 and GM told Soares repeatedly about its concerns, according to the brief.

GM said its employees working with BuynSupply also made it clear they didn't have the authority to turn over the electronic library without further approvals. That would require a purchase order.

"(BuynSupply) was well aware of the fact that GM was simply evaluating its proposal and in no way committing itself to do business in the future with plaintiff," the brief states.

But arbitrator Roman Gribbs disagreed, saying GM's service contract was binding and that GM didn't perform its part of the contract, according to a Jan. 5 ruling.

"The totality of the evidence clearly proved that GM both negotiated and executed the contract in bad faith," wrote Gribbs, a former mayor of Detroit and Michigan Court of Appeals judge. "GM, through its agent, misrepresented that the required GM personnel had endorsed the project."

GM said it's disappointed in the ruling and will appeal on the basis that BuynSupply should not have received a lost-profit award.

"We believe it's contrary to award ... lost profits to a company with no customers or revenue," said Brenda Rios, manager of legal communications for GM. "We think it's contrary to established Michigan law."

Attorney Rodger Young represents auto suppliers and said suing a client, especially one as large as GM, was unheard of years ago. But in the past two years he's reached a favorable settlement and won a jury trial on behalf of small companies suing an automaker and a large

supplier. Young, a partner at Southfield-based Young & Susser P.C., has two similar cases pending.

"It's a very new thing," he said. We've seen more and more suppliers come to us with litigation prepared."

There are a couple of reasons for the shift, said Peter Henning, a law professor at Wayne State University in Detroit. For one, more attorneys now take cases like that on contingency, taking a portion of the award if they win as a fee. In the past, a company would have to pay fees by the hour.

"Lawyers made it viable for smaller companies, and that attracts clients," Henning said.

Second, courts are more efficient and move cases faster. That makes it easier for the smaller company because it takes less time to resolve a case, Henning said.

Young and Neuman also point to growing frustration with automakers. Suppliers deal with price cuts, difficult contract terms and more demands by the automakers. No supplier is going to sue its largest customer, Young said. But when there's an opportunity, suppliers today are more likely to go to court.

"There is an increase in the willingness of tier-two and tier-three suppliers to enforce their rights and remedies," Neuman said.

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