

## Court Says Advice From Counsel Is Affirmative Defense To Tortious Interference Claims In Minnesota

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Earlier this year, the Minnesota Supreme Court recognized as an affirmative defense the reliance upon legal advice in defending against a claim of tortious interference with a contract. In *Sysdyne Corp. v. Rousslang, et al., No. A13-0898 (Minn. Mar. 4, 2015)*, the former employer (Sysdyne) brought a claim against the hiring company (Xigent Solutions), alleging tortious interference after it hired its former employee (Brian Rousslang) who had a non-competition agreement with Sysdyne. Sysdyne also brought claims against Rousslang, alleging violation of his non-competition agreement with the company upon commencement of employment with Xigent Solutions. Although Sysdyne was successful in its claims against Rousslang, both the lower court and, ultimately, the Minnesota Supreme Court found in favor of Xigent Solutions on the tortious interference claim. According to the Minnesota Supreme Court, Xigent's interference with the valid non-competition agreement was justified because the company performed an inquiry through legal counsel and reasonably relied upon that advice prior to hiring Rousslang. Although the legal advice was found to be erroneous, the court explained that its reliance upon legal advice can justify an interference with the agreement so long as it was "informed by something more than an infirm, conclusory legal opinion." During the litigation, the nature of the legal advice received was not disclosed. Instead, the evidence presented consisted of the billing records from Xigent's attorneys and testimony as to what was provided to counsel for review and advice (namely a copy of the agreement). The Minnesota Supreme Court determined this was sufficient to justify the interference as Xigent disclosed all material facts to counsel, received legal advice that claimed the hiring was legal, and acted in good faith reliance upon that advice. Given the *Sysdyne* decision, it will make it much more difficult for a Minnesota former employer to establish a claim of tortious interference against the hiring company if an "informed" legal review of the noncompete agreement is done prior to employing the individual. On the flip side, the hiring company can assert this defense provided it disclosed all "material" facts to counsel regarding the non-competition agreement, including providing a copy of the agreement, prior to hiring the applicant.

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