

CA Sues Ex-CEO To Recover Attorneys' Fees

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Friday, November 17, 2006 --- CA Inc. has brought suit against former chief executive Sanjay Kumar in an attempt to recover the \$14.9 million the software maker paid out for the embattled executive's legal defense.

Kumar has been under investigation by the U.S. Department of Justice and the U.S. Securities and Exchange Commission since 2002 for his alleged involvement in misrepresenting the Long Island, N.Y.-based company's financial status.

In April, Kumar pled guilty to 8 counts of securities fraud, and earlier this month he was handed a 12-year prison sentence and an \$8 million fine.

According to CA, however, Kumar may owe much more than that. In the complaint, filed Monday in the Supreme Court of the State of New York, Nassau County, CA said Kumar was facing restitution payments that could total \$100 million, "an amount that, most likely, he is unable to pay."

CA paid its attorneys at David Polk & Wardwell upwards of \$14.9 million for the ex-CEO's defense, which Kumar was bound by law to pay back, plus interest, according to the complaint.

The complaint references an agreement between Kumar and CA that stated the company would pay attorneys' and court fees, but that Kumar would reimburse the company if he proved to be undeserving of indemnification.

CA contends that Kumar did not qualify for indemnification under Delaware law, where CA is incorporated, because he broke the law knowingly and intentionally.

Expressing doubt that Kumar would be willing to repay his debt, even if he was able to, CA petitioned the court to put a lien on Kumar's assets as security.

The complaint documents Kumar's multiple transfers of bank accounts and assets into his wife's name following the DOJ and SEC investigations. "Kumar's wife – though she does not work – owns a \$6 million house in her name," the complaint said.

CA points to suspect financial deals and recent mysterious trips abroad on "business" as evidence that Kumar have hidden assets that could be tapped to repay his debts.

The complaint names all of Kumar's known assets, including a house, a 57-foot boat, two Ferraris, a Land Rover and a Volvo, as well as some bank accounts and \$9 million that Kumar is receiving over nine years as payment for his part of the New York Islanders hockey team.

Judge Bucaria ordered the attachment on the known property in case Kumar is ordered by the court to repay the attorneys' fees to CA, but cannot do so because of prior commitments.

Federal prosecutors are also expected to follow up Kumar's sentencing with a restitution lawsuit that would repay the victims of his crimes.

The federal restitution payments will most likely take precedence over the legal fee repayments. The \$8 million fine imposed earlier this month may be decreased depending on the federal restitution ruling.

CA has already put \$225 million into a restitution fund for investors and paid \$174 million in settlement of a class-action suit, according to the Wall Street Journal.

CA Inc. is represented in this matter by attorneys from Farrell Fritz PC.

The case is CA Inc. v. Sanjay Kumar, case number 06-018390, in the Supreme Court of the State of New York, Nassau County.