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## Biz Group Pushes For \$500K Bond In 'Patent Troll' Case

By **Travis Bland**

Law360 (March 30, 2023, 5:09 PM EDT) -- Companies such as GPS technology powerhouse Garmin and the parent of Titleist golf products want a North Carolina federal court to slap a \$500,000 bond on a purported "patent troll," arguing that the entity should have plenty of money from trouncing others.

In an **amicus brief** filed Wednesday, the group of eight — which also includes the North Carolina Retail Merchants Association and North Carolina Chamber Legal Institute — likened Landmark Technology A LLC to a "thinly capitalized" husk of a company that uses the ownership of older, low-quality patents to strong-arm legitimate companies into paying licensing fees with veiled threats of taking a patent infringement case to court. The amici wrote in support of the operator of Binders.com, which is suing Landmark.

"At no point in these extended proceedings has Landmark explained how or why it cannot use the money obtained from its hundreds of prior settlements to post a bond in this case," the group said in the brief.

Landmark had issued nearly 1,900 demand letters asking for \$65,000 each between January 2019 and July 2020, the group said, citing a Washington case. The company must have earned hundreds of thousands of dollars in litigation and licensing patents going back to 2008, the amici said.

Even if Landmark has no money, the court has the power to look into other entities related to Landmark to see if they have funds derived from litigation and patent licensing, the group said.

The group evaluated North Carolina's Abusive Patent Assertions Act and argued that its bond provision is a practical and lawful solution to stop non-practicing entities like Landmark from "engaging in abusive patent assertion."

Nonpracticing entities, also called NPEs, set up shell companies to avoid paying litigation and attorney fees if they lose in court, the group laid out in its brief. With the ability to avoid such costs, the entities aren't deterred from coercing companies and litigating meritless patent claims.

The group said the North Carolina law's provision that permits a bond "evens the playing field."

Any bond would be equal to an estimate of litigation costs and fees and any likely damages.

The bond provision is fair and constitutional, along with the rest of the law, the group said, explaining that it provides levels of protections against the bond, such as requiring the party that requests the bond to show that the entity has acted in bad faith in a patent assertion.

The entity subject to the bond could also argue against it, and the court can waive it.

In the case against Landmark, it has been able to file three briefs opposing the bond and be heard in oral arguments, the group said.

The amici are Acushnet Co., Garmin International Inc, North Carolina Chamber Legal Institute, North Carolina Retail Merchants Association, North Carolina Technology Association, Red Hat Inc., SAS Institute Inc. and Symmetry LLC.

Napco Inc., operator of Binders.com, sued Landmark in January 2021.

The company alleged that it received a letter from Landmark claiming infringement on a financial transaction patent and offering to license the patent for \$65,000, which Landmark said was a "substantial discount" that would not be available in litigation.

Napco wants the court to rule that it doesn't infringe and that Landmark violated North Carolina's patent abuse law.

Napco asked for the bond in February 2022.

In answer to Napco's complaint, Landmark A asserted that it hadn't filed frivolous patent lawsuits in the past and put forward a counterclaim asserting its ownership of the financial transaction patent.

The patent-in-suit is U.S. Patent No. 7,010,508.

Counsel for the parties did not immediately respond to request for comment Thursday.

Napco is represented by Andrew R. Shores, Robert Van Arnam and Richard T. Matthews of Williams Mullen, Kelly Alfred Cameron, J. Dennis Bailey and Natalia L. Talbot of Waldrep Wall Babcock & Bailey PLLC and Rachael D. Lamkin of Lamkin IP Defense.

Landmark is represented by Christina D. Trimmer, Samuel A. Long, Jr. and Tom BenGera of Shumaker Loop & Kendrick LLP and John A. Lee of Banie & Ishimoto LLP.

The amici are represented by Raymond M. Bennett of Womble Bond Dickinson and David A. Swetnam-Burland, Peter J. Brann and Eamonn R.C. Hart of Brann & Isaccson.

The case is Napco Inc. v. Landmark Technology A LLC, case number 1:21-cv-00025, in the U.S. District Court for the Middle District of North Carolina.

--Editing by Rich Mills.

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