



# Daniel S. Eichhorn and Sy Kim Successfully Obtained the Dismissal of a \$1.5 Million Dollar Claim Against the Firm's Warehouse Client With Prejudice Even Before the Commencement of Discovery

September 15, 2021

Partners Daniel S. Eichhorn and Sy Kim successfully obtained the dismissal of a \$1.5 million dollar claim with prejudice against the firm's warehouse client before the commencement of discovery. Cullen and Dykman's client is the owner and operator of commercial warehouses in New Jersey, New York and California. A former customer of our client filed suit against our client in the Superior Court of New Jersey alleging losses to inventory that under the parties' warehouse contract the customer claimed entitled them to damages in excess of \$1.5 million dollars.

The warehouse contract that was the subject of the lawsuit had a provision requiring that any customer who had a claim for a loss provide the warehouse with notice of the claim within "sixty (60) days from the earlier of: (i) the date the warehouse delivered the Goods to the CLIENT...or (ii) the date when Client learned or in the exercise of reasonable care should have learned, of the loss, damage, destruction or other event or condition giving rise to the claim." The contract further provided that "no lawsuit or other action may be maintained" unless a timely notice of claim is provided.

The complaint filed by the customer set forth that the notice of claim they served was dated in early September 2021. Cullen and Dykman discovered that documents referenced in the complaint set forth that the claims could not have initially arisen any time later than late June 2021. Thus the notice of claim was made by the customer outside the 60-day time limit set forth in the warehouse contract.

In response to the complaint, Cullen and Dykman filed a motion to dismiss the complaint in full based on the argument that the customer failed to file the required notice of claim within the 60 day period, and pursuant to the contract, the customer was therefore barred from bringing its suit against Cullen and Dykman's warehouse client.

The Court agreed with Cullen and Dykman, granting the motion dismissing the complaint in full with prejudice. The granting of a motion to dismiss with prejudice, prior to the conducting of any discovery in litigation, is not

often done, as it prohibits the suing party from being able to amend their complaint or take other action to reassert their claim in the future. This successful result not only provided the client with a dismissal of a large lawsuit, by obtaining the dismissal with prejudice so early in the litigation, but the client also did not have to expend the costs and fees usually associated with a lengthy litigation, and possible trial.

### **About Cullen and Dykman**

Cullen and Dykman ([www.cullenllp.com](http://www.cullenllp.com)) has been providing legal services to institutional clients since 1850. The firm represents a wide range of clients, including banks and other financial institutions, energy, telecommunications and water companies, construction companies, insurers, educational institutions, religious organizations, and not-for-profits. With over 190 attorneys in seven offices located throughout the Northeast and MidAtlantic regions, Cullen and Dykman is strategically positioned to meet the changing needs and demands of our clients.

## Practices

- Commercial Litigation

## Attorneys

- Daniel S. Eichhorn
- Sy Kim