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## Judge Lifts Qualcomm Sanctions

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SAN FRANCISCO — The sanctions in the Qualcomm discovery scandal that helped destroy Day Casebeer Madrid & Batchelder as well as the careers of several lawyers have been lifted.

In an order (.pdf) dated April 2 but entered late Monday, Judge Barbara Major said it was "undisputed" that Qualcomm Inc. improperly withheld tens of thousands of documents from Broadcom Corp. However, she wrote, "the evidence presented during these remand proceedings has established that while significant errors were made by some of the responding attorneys, there is insufficient evidence to prove that any of the responding attorneys engaged in the requisite 'bad faith' or that [attorney Kevin] Leung failed to make reasonable inquiry before certifying Qualcomm's discovery responses."

Major had sanctioned Day Casebeer attorneys James Batchelder, Adam Bier, Kevin Leung, Christian Mammen and Lee Patch, and Heller Ehrman's Stanley Young in 2008 for assisting "Qualcomm in committing this incredible discovery violation." Qualcomm had failed to turn over tens of thousands of e-mails related to a key point in the patent fight with Broadcom. Qualcomm was also sanctioned to the tune of \$8.5 million.

The issue of sanctions was sent back to Major after the lawyers were given the right to break attorney-client privilege and tell their side of the story. In her second shot at the issue, Major wrote that there was "an incredible breakdown in communication" between everyone involved in discovery. But she didn't find that the lawyers had done it on purpose.

The sanction order had already done its damage. Day Casebeer struggled and then merged with Howrey. Two associates, Leung and Bier, and two partners, Mammen and Patch, left big firm practice altogether. And the case was paraded around as an example of what not to do during discovery.

"It shows the importance of due process: Our clients finally got their chance to tell their side of the facts and a courageous judge considered the evidence and found that they had made a reasonable effort and she exonerated them by declining to impose sanctions," said Joel Zeldin, a Shartsis Friese partner who represented Leung and Mammen.