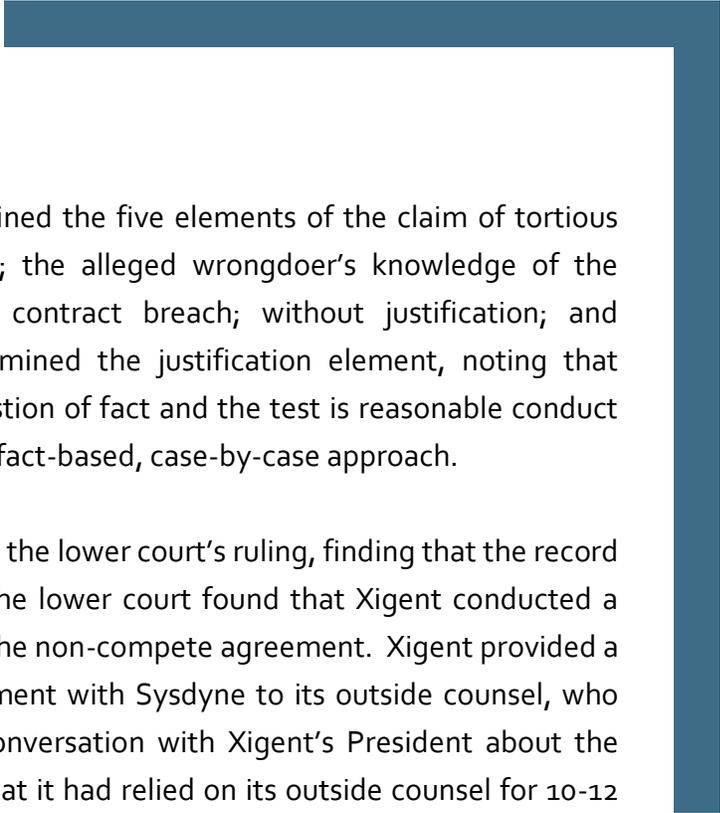


## Minnesota Supreme Court: Reasonable Reliance on Outside Counsel's Advice Justified Contract Interference.

The Minnesota Supreme Court recently decided whether the justification defense to a claim of tortious interference with a contract may be satisfied by reliance on incorrect advice of counsel. The court decided the defense is satisfied upon a showing of a reasonable inquiry and an honest reliance on the advice.

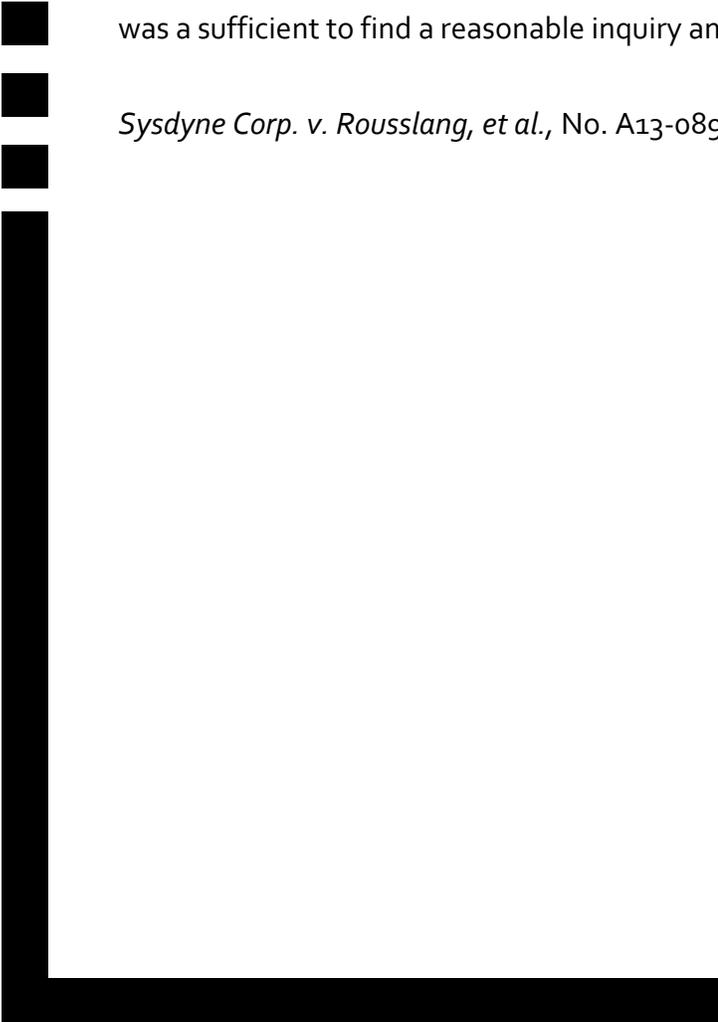
Companies Sysdyne and Xigent both provide staff augmentation services to companies in the engineering and information technology industries. Brian Rousslang was hired in 2006 by Sysdyne, and signed an employment agreement containing a non-compete provision. The provision required for a period of twelve months following termination of employment, Rousslang would not accept employment or be associated with a business competitor of Sysdyne in seven specific Twin City metro area counties. In 2010, Rousslang began exploring working for Xigent. Rousslang provided Xigent with his employment agreement with Sysdyne. Xigent's President sent the agreement to its outside counsel for evaluation and advice. Counsel advised Xigent that he believed the non-compete was overbroad as to Rousslang's preexisting customers and in his opinion the entire agreement was unenforceable. Upon this advice, Xigent offered Rousslang a position, which he accepted.

Sysdyne brought suit against Rousslang for breach of contract and against Xigent for tortious interference with contract and prospective business relationship. On appeal to the Minnesota Court of Appeals, Sysdyne argued that the trial court erred in concluding that Xigent's actions were justified based on its reliance on counsel. The court of appeals affirmed the trial court's decision, finding that the record supported the trial court's findings that Xigent made a reasonable inquiry and honestly believed the advice of its counsel. Sysdyne again appealed to the Minnesota Supreme Court.



The Minnesota Supreme Court examined the five elements of the claim of tortious interference: the existence of the contract; the alleged wrongdoer's knowledge of the contract; intentional procurement of the contract breach; without justification; and damages. The court here specifically examined the justification element, noting that whether the interference is justified is a question of fact and the test is reasonable conduct under the circumstances. The test requires a fact-based, case-by-case approach.

The Minnesota Supreme Court upheld the lower court's ruling, finding that the record supported the finding of reasonableness. The lower court found that Xigent conducted a reasonable inquiry into the enforceability of the non-compete agreement. Xigent provided a copy of the Rousslang's employment agreement with Sysdyne to its outside counsel, who then reviewed the agreement and had a conversation with Xigent's President about the provision. Xigent also provided testimony that it had relied on its outside counsel for 10-12 years, and that the company viewed its attorney as an expert in the field. This, for the Court, was a sufficient to find a reasonable inquiry and honest reliance.



*Sysdyne Corp. v. Rousslang, et al.*, No. A13-0898 (Minn. March 4, 2015).

