

Equifax sued for \$43 million over former HQ

The symbolism was hard to miss.

In early November, work crews removed the 50-foot-tall "iXL" logo from 1600 Peachtree St., establishing once and for all that Atlanta's highest-flying dot-com was no more.

But iXL Enterprises Inc.'s multimillion-dollar flameout (and subsequent merger into rival Scient Corp.) is now scorching a 102-year-old Atlanta institution.

Information services company Equifax Inc. (NYSE: EFX) is the target of a \$42.9 million lawsuit filed in Fulton County Superior Court on Nov. 16 by the owners of its mostly empty former headquarters. The landlord, 1600 Peachtree LLC, alleges that Equifax has not lived up to the lease termination agreement it signed in 1999 and seeks back rent (due to iXL's nonpayment during 2001) as well as compensatory and punitive damages.

The 1999 termination agreement stated that Equifax guaranteed that rent would be paid on the entire building until March 2004 and other portions that it still occupied until 2013, according to the lawsuit. With iXL's lease, Equifax didn't pay rent as long as iXL kept paying but the guarantee remained.

Equifax's guarantor status appears to have its roots in the company's push for a new headquarters building in Midtown.

In 1994, Equifax sold its longtime headquarters to 1600 Peachtree LLC, a partnership including late mall developer Scott Hudgens and prominent businessman Herman Russell. At the time of the sale, Equifax signed a 15-year lease for the 300,000-square-foot building. The rent was \$3.1 million per year or about \$10 per square foot.

Approximately three years later, according to the complaint, Equifax approached the landlords and told them that it would like to be in a new headquarters building (at 1550 Peachtree Street) by its 100th anniversary in 1999.

A lease termination agreement was then drawn up guaranteeing rent and expenses for the landlord through March 31, 2004. After the landlord reached a lease agreement with iXL in December 1999, an amended and restated termination agreement was signed by both Equifax and 1600 Peachtree LLC.

The lawsuit brings to a head several contentious months of letter writing and lawsuits related to iXL's inability to pay rent, the actions that the landlord took to recover that money and the late-September termination of iXL's lease at 1600 Peachtree.

"To me, Equifax is right up there with Coca-Cola — you can count on them," said **Richard L. Robbins**, the Sutherland Asbill & Brennan LLP attorney representing 1600 Peachtree LLC in the case. "We never wanted this lawsuit, we wanted them to pay the damn money we're owed."

Equifax disputes the assertion that it does not honor its contractual commitments.

"Our position in this matter has repeatedly been made clear to 1600 Peachtree and is set forth in a letter dated Nov. 7, 2001," that was sent to 1600 Peachtree LLC, company officials said in a statement.

"That letter triggered the lawsuit," Robbins said.

In it, Equifax attorney Tim Carsow of Kilpatrick Stockton LLP states that the company believes the landlord "has taken actions in regard to the 1600 Peachtree building that have materially increased the risk to Equifax ... under the Guaranty Agreement."

Those actions stem from the alleged failure of 1600 Peachtree LLC to pay iXL all of the tenant improvement funds included in the lease, according to the Nov. 7 letter. That alleged failure resulted in lower rent payments for iXL; a negative effect on iXL's cash position, making a lease default more likely and a series of disagreements (including two lawsuits filed by 1600 Peachtree for back rent from iXL) that created an adversarial relationship and eliminated any chance that the landlord and iXL could work together to sublease iXL's unneeded space, Carsow wrote on behalf of Equifax.

Those combined factors mean 1600 Peachtree LLC has violated a Georgia law that states any action by a creditor (the landlord in this case) that places a guarantor at more risk or exposes it to greater liability discharges that guarantor from any liability, according to the Nov. 7 letter from Equifax's attorney.