CALLAHAN & BLAINE WINS $934 MILLION FOR BECKMAN COULTER

Beckman Coulter manufactures medical instruments used by hospitals, clinics and research centers throughout the world. One of these instruments is the LX20 Blood Analyzer. An integral part of the LX20 are 37 separate circuit boards. Since Beckman Coulter's core competency is not in the manufacture of circuit boards it sought to outsource the manufacture of the circuit boards to an electrical component manufacturer. After a one-year selection process, Beckman Coulter chose Dovatron Manufacturing, Inc., the tenth largest electrical component manufacturing company in the world.

Beckman Coulter and Dovatron entered a partially written, partially oral contract in 1998 for Dovatron to manufacture its circuit boards. After a ten month FDA validation process Dovatron received an FDA certification so that the boards manufactured by Dovatron could be used in the medical instruments sold by Beckman Coulter. This occurred approximately on August 24, 1998. On August 31, 1998 Dovatron insisted that Beckman Coulter pay an additional $300,000 that was not otherwise required to be paid by Beckman under the terms of their contract. All of the witnesses testified that Beckman Coulter had a fixed price for the circuit boards and there was no contractual justification for this additional charge.

Witnesses further testified that if Beckman Coulter did not acquiesce in Dovatron's unilateral demand for money that Steve Howard, the general manager and vice president of Dovatron, would cut-off production of circuit boards for Beckman Coulter. Fearing that Dovatron would follow through on its threat, Beckman Coulter personnel agreed to pay this $300,000 surcharge. The stated reason for this agreement was that if Beckman Coulter did not acquiesce then absent the circuit boards to be produced by Dovatron, Beckman Coulter would suffer severe economic losses. These losses would include, but were not limited to, the inability to access circuit boards to service existing LX20's in hospitals, research centers and clinics throughout the world as replacements were needed. In addition, Beckman Coulter would have to find a new supplier for circuit boards and finding such supplier had already proven to take one year and going through the FDA validation process had taken an additional 10 months. The expert opinion at the trial was that if Beckman Coulter were unable to access these boards for even a period of 4 months that its damages would be $45 Million due to loss of sales of LX20's and the consumables and reagents that necessarily follow such a sale. The imposition of this $300,000 surcharge gave rise to a cause of action for Economic Duress in 1998. The jury's finding on this cause of action will be discussed below.

It was agreed that the $300,000 would be collected by adding $40.28 to each printed circuit board assembly manufactured by Dovatron for Beckman Coulter. Because the circuit boards were being ordered from one location and sent to other locations, the only individual capable of tracking when the requisite number of circuit boards were sold to Beckman Coulter and thus the $300,000 was collected, was Donna Catone, the program manager for Dovatron. She did track the sale of these circuit boards and the collection of the surcharge. Once the $300,000 surcharge had been reached, her unequivocal testimony was that she informed Steve Howard, Dovatron's general manager and managing agent for Dovatron. Steve Howard instructed her not to tell

Beckman Coulter but rather to continue to charge the surcharge. She did that in fear of losing her job. Eventually a total of $655,212 was collected on the surcharge, i.e. $355,212 more than was initially agreed under duress. This over collection was actively concealed by Dovatron from Beckman Coulter. And, in fact, Donna Catone testified: "I lied at the instruction of my boss and I would have taken this secret to the grave had it not been for the subpoenas served upon me." This concealment was another cause of action that Beckman Coulter prevailed upon and will be discussed further below.

After this economic duress was imposed upon Beckman Coulter, the process to finalize a formal written agreement was expedited. A formal written agreement was signed on February 9, 1999 which related back and covered the period from November 1, 1997 through October 31, 2002. In April of 2000, Flextronics purchased Dovatron and assumed all of Dovatron's obligations in connection with its purchase of stock. On May 30, 2000 Flextronics notified all of the customers of Dovatron's Anaheim facility, including Beckman Coulter, that it was closing its doors within 90 days. On this same day, Flextronics notified its employees that they were being terminated. The following day Flextronics announced in a public press release that it had just entered into a $30 Billion contract with Motorola. The testimony at the trial was that Flextronics was switching from "high mix low volume" business to "low mix high volume" business. In other words, it no longer wanted to manufacture complicated circuit boards for Beckman Coulter's LX20 but rather was choosing to make simpler circuit boards such as for cell phones for Motorola. The termination notice was given to Beckman Coulter on May 30, 2000 despite the Beckman Coulter contract's agreed term to extend October 31, 2002. The jury found this to be a clear breach of contract. Flextronics personnel, Terry Zale and later Matt Ryan, admitted that this was an unequivocal breach and an anticipatory repudiation of the existing contract with Beckman Coulter. This notification put Beckman Coulter in a very precarious position. It had previously taken Beckman Coulter 12 months to select an electrical component contract manufacturer and 10 months to have the FDA validate the production of circuit boards at Dovatron. Now being left with merely 90 days to find an alternate source for the circuit boards was a horrific and monumental task for Beckman Coulter. Fortunately, Beckman Coulter's Porterville facility had manufactured the prototypes for the circuit boards used in the LX20. Almost immediately Beckman Coulter shifted gears and explored the possibility of having Porterville resume the production of the circuit boards since to do otherwise would mean an unbearable and potentially "catastrophic" delay in the production of these boards. This breach of contract caused Beckman Coulter to "cover" under the terms of the UCC through the manufacturer of the circuit boards "in house" at Porterville because no other contract manufacturer was available. At the trial, Flextronics did not put on any evidence that any other contract manufacturer was ready, willing or available to produce the circuit boards nor did Flextronics put on any evidence that any other electrical component manufacturer had the capacity or the testing equipment required to manufacture the circuit boards needed by Beckman Coulter for its LX-20.

Because Beckman Coulter worked day in and day out with days blending into weeks, and weeks blending into months, Beckman Coulter was able to manufacture the circuit boards in its Porterville facility without affecting its sales of the product. In transitioning the production in Porterville and manufacturing these boards at Porterville, Beckman Coulter did incur substantial economic damage in the amount of $2,144,785. These were the damages Beckman Coulter sought for breach of contract which also will be discussed below.

After the May 30, 2000, notice of termination of the contract and while Beckman Coulter was in the process of transitioning the production of the circuit boards to its Porterville facility, Flextronics' personnel had possession of critical components needed by Beckman Coulter in order to complete the manufacture of the circuit boards in question. Despite repeated requests for these critical components, Flextronics willfully withheld these components from Beckman Coulter and would only release these components if Beckman Coulter purchased unneeded inventory and components, thus "clearing out the Anaheim facility." The evidence in the case was unequivocal that Flextronics demanded that Beckman Coulter purchase inventory and components that were of no value or use to Beckman Coulter. As a condition to Flextronics releasing the critical components that it had in its possession designed solely for use in Beckman Coulter's circuit boards.

The evidence was also undisputed that if Beckman Coulter did not acquiesce in Flextronics' demand that Beckman Coulter purchase all of this unnecessary and useless inventory and components that Beckman Coulter would suffer economic damages in an amount in excess of $295 million. That was calculated by Mr. Ed Vivanco, former president of the Coulter Corporation and the senior officer in Beckman Coulter. These damages were made up of approximately $135 million of one year's lost profits on the LX-20 and the reagents and consumables that would have naturally followed as well as loss of research and development expenses of nearly $160 million. Faced with this unconscionable result and having no alternative but to acquiesced in Flextronics' unreasonable, malicious, and oppressive demand Beckman Coulter acquiesce and purchased the inventory and components that it did not wish solely to obtain the critical components that were needed and were not obtainable elsewhere. These components were referred to as "Life Time Buys."

During the "disengagement process" Beckman Coulter prepared a list of expenses it was incurring in the transition to Porterville and presented that list on August 31, 2000 to Flextronics. Rather than offer even one dollar to help ease Beckman Coulter's pain, Flextronics chose to put Beckman Coulter on a C.O.D. basis and refuse to release any components or inventory to Beckman Coulter until all outstanding invoices were fully paid and all future shipments were paid for in advance. Two weeks later on September 13, 2000, Flextronics wrote to Beckman Coulter and informed it that if Beckman Coulter did not buy all of the remaining inventory that it would destroy the critical components needed by Beckman Coulter. The next day, Beckman Coulter wired $143,000 to Flextronics.

These actions which were testified to by Terry Johnson and admitted by Terry Zale and Matthew Ryan formed the basis of the second economic duress claim brought by Beckman Coulter against Flextronics. When the actions of Terry Zale, the plant manager that replaced Steve Howard after Flextronics acquired Dovatron, were outlined and explained to Michael McNamara the Chief Operating Officer for Flextronics, Mr. McNamara praised Mr. Zale's conduct and stated that his offer was "too generous." Mr. McNamara laughed when asked about the impact of Flextronics' decision upon Beckman Coulter and the consequent impact upon the American public's health and safety when emergency rooms and hospitals and universities around the nation would be denied replacement circuit boards and patients wheeled into the emergency rooms would be delayed in obtaining needed medical care due to Flextronics' single minded pursuit of profit. Michael McNamara further testified that the business traits exhibited by Terry Zale were traits that he wished to nurture within Flextronics.

After two and one-half months of trial, the jury was presented with four verdict forms. These verdict forms are available for review on this website. Verdict Form No. One was for Breach of Contract which resulted in an award of $2,144,785. Verdict Form No. Two was for Concealment of the overcharge on the 1998 surcharge which resulted in actual compensatory damages of $355,212. The jury also found that Steve Howard was a Managing Agent of Dovatron, now Flextronics, and that he acted with malice, oppression or fraud and thus, imposed punitive damages four (4) times that amount, or approximately $1,428,000. Verdict Form No. 3 for the Economic Duress claim that occurred in 1998 when Steve Howard insisted that Beckman Coulter pay $300,000 that it had no contractual obligation to pay, the jury found that Steve Howard acted as a Managing Agent of Dovatron, now Flextronics, and that he acted with malice, oppression or fraud. The jury awarded the $300,000 surcharge as compensatory damages (actually $655,212 was extorted from Beckman Coulter, but $355,212 was already awarded under the concealment theory). Thereafter, the jury found that the economic damages that would have resulted to Beckman Coulter if Beckman Coulter had not succumb to Flextronics' demand in 1998, was $45 million. That was based on the expert testimony of Mr. Jim Skorheim of Moss Adams, a forensic accountant. Thereafter, the jury awarded punitive damages of four (4) times the amount of potential damages that Beckman Coulter would have suffered had it not succumb to the economic pressure put upon it. Thus, the jury awarded $180 million arising out of the Economic Duress imposed upon Beckman Coulter in 1998. Verdict Form No. 4 was for Economic Duress imposed in the year 2000 i.e., economic duress in withholding the critical components or Life Time Buys in the year 2000. The jury found that Flextronics was liable for economic duress and that Terry Zale was a Managing Agent for Flextronics and acted with willful, malice, oppression or fraud in the imposition of this Economic Duress by his steadfast refusal to release the critical components i.e., Life Time Buys, needed by Beckman Coulter to produce circuit boards. The jury also weighed evidence of admissions made by Terry Zale that he was withholding the Life Time Buy and Matt Ryan, Mr. Zale's supervisor, that he was award of that withholding of Life Time Buys inventory and approved of the process. The jury also weighed the testimony of Donna Catone, the Flextronics program manager, who testified that she was instructed to withhold these critical components from Beckman Coulter unless Beckman Coulter paid for all unnecessary, unneeded and often useless inventory still retained by Flextronics. Much of this inventory in fact was not even related to the Beckman Coulter account. Documentary evidence was produced where in Flextronics' own documentation, the critical components were put on "Life Time Buy Hold." The evidence was overwhelming and admitted in fact by Flextronics personnel, except for one party representative who said they were not on "hold" but were on "non-release." As a result of this overwhelming evidence, the jury found that the potential damages that Beckman Coulter would have incurred had it not acquiesced in Flextronics acts of Economic Duress was slightly in excess of $295,744,000. Thereafter, the jury unanimously awarded $750 million of punitive damages on this theory which is approximately two and one-half times (2½) the amount of potential damages that Beckman Coulter would have incurred had it not acquiesced in the wrongful conduct imposed upon by Flextronics.

The net result of all of these causes of action was a verdict in excess of $934,400,000, which as you can see through this web page is consistent with the United States Supreme Court decisions in TXO, BMW and Campbell.

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