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Article of the week from *Michigan Lawyers Weekly*:

## **\$750K sanctions awarded in favor of defendants**

### ***Perjured trial testimony led to dismissal of plaintiff's claim***

Plaintiff Material Technologies, Inc. (MTI) sued defendants Johnson Controls, Inc. (JCI) and Concept Industries, Inc. (Concept), seeking damages of approximately \$3 million. The plaintiff sought unpaid royalties under written agreements with each of the defendants regarding certain manufacturing technology obtained by the defendants through the plaintiff.

JCI and Concept ceased paying the royalties after they learned that MTI may have misrepresented its exclusive ownership rights in the technology. JCI and Concept contended that these representations were material to the defendants' agreement to pay a royalty for the technology.

In 1994, MTI's sole shareholder, Harry J. Rozek, contacted JCI's predecessor, Prince Corporation, about an opportunity to acquire rights to the state-of-the-art technology, called "VL Technology." This technology involved the manufacture of fiber mat to absorb sound in automotive interiors. Rozek primarily dealt with Prince employee, Pete Elafros. Elafros was appointed by Prince as its product manager over VL Technology and he was put in a position to make recommendations and influence Prince's decision whether and under what terms to acquire the technology. Elafros made numerous statements, orally and in writing, suggesting that MTI had exclusive and proprietary ownership interests in the VL Technology, and he encouraged Prince management to pursue the acquisition.

Based in part on these recommendations from Elafros as well as from MTI, Prince entered an agreement with MTI to pay a 3.5 percent royalty for products made using the VL Technology. MTI agreed to assign to Prince all of its right, title and interest in the VL Technology.

Later, Prince decided to sell the equipment to make VL-related products to one of its suppliers, Concept, along with the right to manufacture VL products. Concept agreed to assume Prince's obligation to pay the royalties to MTI, but nevertheless, Prince assured MTI that the payments were being made by Concept solely for administrative convenience and that the arrangement would not affect or change the existing agreement with MTI. Concept entered into a separate agreement with MTI to pay a royalty directly to it.

During discovery, the parties learned that, beginning in 1996, MTI began secretly paying monies to product manager Elafros. MTI paid Elafros approximately \$74,000 while Elafros was a Prince (then JCI) employee, and another \$208,000 after his employment was terminated. The payments were never previously disclosed to anyone at Prince or JCI.

Counsel said that, based on these facts, JCI and Concept contended that the payments from MTI to Elafros were secret kickbacks to buy his loyalty so that he would recommend that Prince enter into a contract with MTI. Further, counsel noted that Rozek and Elafros adamantly denied this, repeatedly affirming in depositions, interrogatory responses, affidavits, and other court filings that the payments were completely legitimate — that they were merely compensation for consulting services performed on nights and weekends and billed on an hourly basis, having virtually nothing to do with JCI, Concept, or the VL Technology. Elafros was issued a subpoena, and he produced two spreadsheets that he claimed were prepared years earlier, itemizing in each month from 1996-2000 the amounts he billed to MTI, the projects he worked on, and the amount of payments he received for services.

At a bench trial conducted by Ottawa County Circuit Court Judge Edward R. Post, Rozek and Elafros both testified on the plaintiff's behalf. They reaffirmed their deposition testimony, affidavits, and discovery responses that the payments from MTI to Elafros were completely legitimate payments for consulting services performed by Elafros on nights and weekends, wholly unrelated to his work at JCI, the VL Technology, or Concept, and billed on an hourly basis.

During cross examination, however, counsel said the defendants demonstrated that Rozek and Elafros lied about the payments. The defendants established that nearly every payment that MTI made to Elafros was equal to 50 percent of each royalty payment MTI received from JCI and/or Concept. Despite this forensic accounting evidence, counsel said that Rozek and Elafros continued to deny the kickback arrangement, over several days of questioning. During the testimony of Elafros, Defendants filed a motion to dismiss and for sanctions based on Elafros' and Rozek's perjured testimony and false discovery responses.

Immediately following the testimony of Elafros and before the close of the plaintiff's case-in-chief, the court granted the defendants' motion from the bench.

Counsel said that, while the court recognized that dismissal of the plaintiff's case was a drastic action, the perjury by Rozek and Elafros mandated nothing less. The judge pointed out that the pivotal issue in the case was whether and to what extent the VL Technology was claimed to be proprietary and that the testimony of Elafros on that issue was essential, since he was the employee "most materially and continuously involved in the entire transaction."

Judge Post found that the "plaintiff's perjury is clear and not subject to multiple interpretation;" that the perjury dealt with issues material to the case; and that Rozek had been given repeated opportunities, both before and during trial, to rectify his fraud. As such, he concluded that he "cannot think of a more deserving case for employing the ultimate sanction than the one before the court."

The court ordered the plaintiff's claims dismissed and awarded to Defendants as a sanction their costs and attorneys' fees necessitated by the fraud. The court also referred the matter to the Ottawa County Prosecuting Attorney's office for investigation of criminal perjury charges against Elafros and Rozek. As a result of the court's order, the parties agreed to a judgment in the amount of \$750,000 in favor of Johnson Controls and Concept Industries and against Harry Rozek and Material Technologies in order to resolve the award of attorneys' fees and Defendants' counterclaims.

**Type of action:** Breach of contract

**Type of injuries:** Plaintiff claimed unpaid royalties of approximately \$3 million; defendants counterclaimed for disgorgement of royalties previously paid and other monetary damages

**Name of case:** Material Technologies, Inc. v. Johnson Controls Interiors, LLC, et al.

**Court/case no./date:** Ottawa County Circuit Court; #02-43925-CK; May 23, 2006

**Name of judge:** Edward R. Post

**Verdict amount:** \$750,000 for defendants

**Attorney for the plaintiff:** Withheld

**Attorneys for the defendants:** Marc L. Newman and Martha J. Olijnyk; David J. Gass (defendant Concept Industries, Inc.)