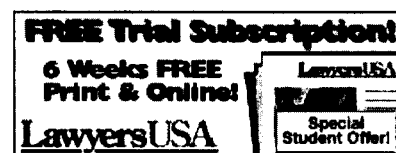


MICHIGAN LAWYERS WEEKLY

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From the September 10, 2007 Michigan Lawyers Weekly.

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Verdicts & Settlements

Tortious inference suit nets \$312K settlement

Plaintiff: Employment, service contracts were breached

Scott D. Sample was an at-will sales employee of plaintiff Lytle Medical Technologies, Inc., and, as part of his employment, signed a noncompetition and nonsolicitation agreement. One of the plaintiff's former

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vendors, VQ OrthoCare, decided to terminate its supply contract with the plaintiff and, instead, to compete directly with the plaintiff.

VQ then began to solicit Sample as its local sales representative.

VQ — a new entrant to the Michigan market — sought to take over the plaintiff's business and agreed with Sample and one of his colleagues to transfer all of Sample's contacts to VQ. Sample then began to solicit the plaintiff's customers directly and through his

colleague.

The defendant's actions caused customers to leave Lytle Medical or lower their volume of business, and some even began working with VQ directly.

Within weeks of Sample's departure from Lytle Medical, the plaintiff obtained an injunction, precluding Sample from soliciting its customers. After the injunction was issued, the plaintiff amended its complaint to include VQ. It also sought monetary damages for — among other things — inducing Sample to breach his noncompetition agreement, and for tortiously interfering with the at-will contract between the plaintiff and Sample, as well as with the plaintiff's business expectations with its customers.

According to counsel for the plaintiff, David H. Fink, defendants VQ and Sample argued that Sample's total sales between the time he began working with VQ and the time of the injunction amounted to less than \$9,000 and the injunction extinguished any damages beyond the date it was issued.

The defendants also argued that Sample's noncompetition and nonsolicitation agreement did not restrict his activities with regard to the product lines at issue, Fink recalled.

Finally, he said, defendant VQ argued it had a right to solicit the customers at issue, based on the terminated vendor contract between the plaintiff and itself.

The matter went to case evaluation, Fink said, and the evaluators issued an award in favor of the plaintiff for \$30,000.

But, Fink told *Lawyers Weekly*, after further discovery and pretrial motions, the plaintiff obtained a cash

settlement from the defendant for \$312,500.

Type of action: Breach of contract, tortious interference with contractual relationships and business expectations, civil conspiracy and conversion

Type of injuries: Monetary damages

Name of case: *Lytle Medical Technologies, Inc v. Sample, et al.*

Court/Case no./Date: Oakland County Circuit Court; 06-074814-CK; June 20, 2007

Name of judge: Mark A. Goldsmith

Settlement amount: \$312,500

Most helpful expert: Thomas Frazee

Attorney for plaintiff: David H. Fink and Martha J. Olijnyk

Attorney for defendant: Withheld

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