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 VERDICTSEARCH

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#40 Breach of contract cost dental manufacturer millions: plaintiff

Case Type: Breach of Contract — Contracts — Fraudulent Inducement — Contracts — Implied Covenant of Fair Dealing — Intellectual Property — Unfair Trade Practices — Intellectual Property — Lanham Act — Intellectual Property — Unfair Competition — Intellectual Property — Misappropriation of Trade Secrets — Consumer Protection — False Advertising

Case: **Guidance Endodontics LLC v. Dentsply International Inc.**, D.N.M., 1:08-CV-01101-JB-RLP, 10/9/2009

Plaintiffs' Attorney: Kyle C. Bisceglie, Olshan Grundman Frome Rosenzweig & Wolosky LLP, New York City; John J. Kelly, Modrall Sperlberg Law Firm, Albuquerque, N.M.

Defense Attorney: Thomas P. Gulley, Lewis and Roca LLP, Albuquerque, N.M.

Jury verdict: \$44,280,000

FACTS & ALLEGATIONS On July 29, 2008, plaintiff Guidance Endodontics LLC, an Albuquerque-based endodontic products manufacturer, entered into a settlement agreement and release with Dentsply International Inc., an endodontic obturator manufacturer of York, Pa., which had previously sued Guidance for patent infringement.

As material consideration for the settlement, the parties entered into a supply agreement, wherein Dentsply and subsidiary Tulsa Dental Products LLC of Oklahoma agreed to manufacture for Guidance all of its proprietary endodontic instruments.

Guidance, in turn, agreed to purchase all of its requirements for such products from Tulsa Dental on an exclusive basis.

Guidance alleged that Dentsply and Tulsa, in attempt to eliminate Guidance as a competitor, refused to supply Guidance with obturators; made it difficult for Guidance to develop next generation files (specifically, the V2 Files); deliberately was slow in delivering Guidance products; and disparaged Guidance to Guidance's customers. Dentsply and Tulsa's refusal to supply Guidance with obturators constitutes a material breach and/or repudiation of the supply agreement, according to Guidance.

Guidance sued Dentsply and Tulsa, asserting breach of contract, breach of implied covenant of good faith and fair dealing, and violations of the New Mexico Unfair Practices Act and federal Lanham Act.

The defendants denied the allegations and counterclaimed against

Guidance and its CEO Charles Goodis, asserting charges of fraudulent inducement, breach of contract, willful false advertisement, unfair competition, misappropriation of trade values, and violation of 15 U.S.C. § 114(1).

INJURIES/DAMAGES Guidance sought \$6.7 million in compensatory damages and \$56 million in punitive damages.

Dentsply and Tulsa Dental sought damages pursuant to their claims.

RESULT The jury found for Guidance on its claims for breach of contract and breach of implied covenant of good faith and fair dealing, violation of the New Mexico Unfair Practices Act, but against Guidance for its federal Lanham Act claim. Guidance was awarded \$44.28 million.

Jurors found against Dentsply and Tulsa Dental's on their fraudulent inducement claim and found that they did not suffer any damages as a result of Guidance's breach of the agreement. However, the jury found that Guidance and/or Goodis engaged in false advertising and thereby violated 15 U.S.C. § 1125, and that their violation was willful. Jurors also found that Guidance and/or Goodis did not infringe on Dentsply and Tulsa Dental's Thermafil mark, thereby not violating 15 U.S.C. § 114(1); that Guidance and/or Goodis did not unfairly compete against Dentsply and/or Tulsa Dental; and that Guidance did not misappropriate Dentsply's and/or Tulsa Dental's trade values. The jury determined that Guidance's and/or Goodis' profits attributable to the false advertising was in the amount of \$93,000, which was awarded to the defendants.

POST-TRIAL Plaintiff's counsel motioned to have the court enter judgment on the verdict. Defense counsel filed multiple motions, including a motion to set aside punitive damages.

Editor's Note This report is based on court documents and information that was provided by plaintiff's and defense counsel.

