

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DEAN A. MONCO, an individual,)
JOHN S. MORTIMER, an individual, and)
WOOD, PHILLIPS, KATZ, CLARK)
& MORTIMER, an Illinois professional)
partnership,)

Plaintiffs.)

v.)

No. 17-cv-6882

ZOLTEK CORPORATION, a Missouri)
corporation, ZSOLT RUMY, an)
individual, TORAY INDUSTRIES,)
INC., a Japanese corporation, THOMPSON)
COBURN LLP, and ARENT FOX LLP)

Defendants.)

COMPLAINT

Plaintiffs, Dean A. Monco (“Monco”), John S. Mortimer (“Mortimer”) (collectively “Monco/Mortimer”) and Wood, Phillips, Katz, Clark & Mortimer (“Wood Phillips”), by and through their attorneys, allege as follows:

1. This is an action against Defendants regarding Monco/Mortimer’s representation of Zoltek Corporation (“Zoltek”) in the patent infringement case entitled *Zoltek Corporation v. United States*, Case No. 96-166C, previously pending in the United States Court of Federal Claims from 1996 to 2017 (hereinafter “Zoltek Litigation”).

2. Plaintiffs, Monco/Mortimer represented Zoltek for over 20 years in the Zoltek Litigation, which was extremely contentious and difficult patent litigation.

3. Monco/Mortimer and Zoltek had a written agreement (“the April 1996 Retainer Agreement”) wherein Monco/Mortimer were to be compensated primarily on a contingency basis.

4. Plaintiff, Wood Phillips, a third-party beneficiary of the April 1996 Retainer Agreement, and Monco/Mortimer were also to be partially compensated on a reduced hourly basis for attorney services to be rendered in the Zoltek Litigation.

5. Zoltek terminated Monco/Mortimer just weeks before mediation wherein the case settled for \$20 million. Zoltek refuses to pay Monco/Mortimer any amount of what they are owed for over 20 years of work.

THE PARTIES

6. Plaintiff, Wood Phillips, is a law firm organized as an Illinois professional partnership with its principal place of business in Chicago, Illinois.

7. Plaintiff, Monco, is a citizen of, and licensed attorney in, the State of Illinois, and at all times relevant to this lawsuit was either a partner in, or of-counsel to, Wood Phillips.

8. Plaintiff, Mortimer, is a citizen of, and a licensed attorney in, the State of Illinois, and at all times relevant to this lawsuit was a partner in Wood Phillips.

9. Defendant, Zoltek, is a Missouri corporation with its principal place of business in St. Louis, Missouri and, until 2014, was a publicly traded company.

10. Defendant, Zsolt Romy (“Romy”), is the founder and, until 2014, was the largest shareholder and president/chief executive officer of Zoltek during the entire relevant time period. Romy is a citizen of the State of Missouri.

11. Defendant, Toray Industries, Inc. (“Toray”), is an international Japanese corporation with its principal place of business in Tokyo, Japan.

12. Defendant, Thompson Coburn LLP, is a law firm with its headquarters in St. Louis, Missouri and which also has an office in Chicago, Illinois.

13. Defendant, Arent Fox LLP, is a law firm with offices throughout the U.S., with its headquarters in Washington D.C.

JURISDICTION AND VENUE

14. The April 1996 Retainer Agreement between Monco/Mortimer as partners in, and/or counsel to, Wood Phillips and Zoltek provides for exclusive jurisdiction and venue to be the United States District Court for the Northern District of Illinois for resolution under Illinois law of any and all disputes.

15. This Court has specific jurisdiction over Romy because the April 1996 Retainer Agreement expressly states that jurisdiction and venue for all causes of action between the parties will be exclusively in Illinois. Romy signed the 1996 April Retainer Agreement as the largest shareholder of Zoltek and is thus so closely related to this dispute that it was foreseeable that Romy would be bound by the jurisdiction/venue clause.

16. This Court has specific jurisdiction over Romy as he was the president/chief executive officer and the largest shareholder of Zoltek, and entered into the written April 1996 Retainer Agreement in Illinois which is the basis for the causes of action in this case.

17. This Court additionally has specific jurisdiction over Romy because he committed the intentional tortious acts set forth below in Counts I and II, causing foreseeable injury to Plaintiffs in Illinois.

18. This Court has general jurisdiction over Romy because, upon information and belief, as the largest shareholder and president/CEO of Zoltek, Romy has had substantial,

continuous and systematic contacts within Illinois, including attending meetings, making telephone calls and sending mail to Monco/Mortimer.

19. This Court has specific jurisdiction over Toray because the 1996 April Retainer Agreement expressly states that jurisdiction and venue for all causes of action between the parties will be exclusively in Illinois. When Toray purchased Zoltek in 2014, it was fully aware of the April 1996 Retainer Agreement and is thus so closely related to this dispute that it was foreseeable that Toray would be bound by the jurisdiction/venue clause.

20. This Court has specific jurisdiction over Toray because it committed the tortious acts set forth below in Counts I and II, causing foreseeable injury to Plaintiffs in Illinois.

21. This Court has general jurisdiction over Toray because, upon information and belief, Toray has continuous and systematic contacts within Illinois.

22. This Court has specific jurisdiction over Thompson Coburn because it committed the tortious acts set forth below in Counts I and II, causing foreseeable injury to Plaintiffs in Illinois.

23. This Court has general jurisdiction over Thompson Coburn because it has continuous and systematic contacts within Illinois, including, but not limited to, having offices in Illinois.

24. This Court has specific jurisdiction over Arent Fox because the April 1996 Retainer Agreement expressly states that jurisdiction and venue for all causes of action between the parties would be exclusively in Illinois. Arent Fox was aware of the April 1996 Retainer Agreement when it committed its tortious acts, and is thus so closely related to this dispute that it was foreseeable that Arent Fox would be bound by the jurisdiction/venue clause.

25. This Court has specific jurisdiction over Arent Fox because it committed the tortious acts set forth below in Counts I and II, causing foreseeable injury to Plaintiffs in Illinois.

26. This Court has general jurisdiction over Arent Fox because, upon information and belief, it has continuous and systematic contacts within Illinois.

27. Subject matter jurisdiction is proper in this district pursuant to 28 U.S.C. § 1332(a). The amount in controversy exceeds \$75,000 and the parties are citizens of different states.

28. Venue in this district is also proper pursuant to 28 U.S.C. § 1391(b) because it is a judicial district in which a substantial part of the events giving rise to the claims herein occurred.

FACTUAL BACKGROUND

Filing the Complaint, The First Summary Judgment and Claim Interpretation

29. United States Patent No. RE 34,162 (“the Zoltek Patent”) is related to a method of producing carbon fiber sheets which has an application on military aircraft to avoid radar detection.

30. Wood Phillips and Zoltek entered into a 1996 Retainer Agreement dated February 1996 for Wood Phillips to represent Zoltek to enforce the Zoltek Patent.

31. Subsequently, Monco/Mortimer and Zoltek entered into a new 1996 Retainer Agreement dated April 15, 1996 which replaced the February 1996 Retainer Agreement. Wood Phillips was not a party to the April 1996 Retainer Agreement.

32. According to the April 1996 Retainer Agreement, Monco/Mortimer’s compensation was contingent on the amount received in the lawsuit, with Zoltek being responsible for out-of-pocket expenses.

33. On March 25, 1996 Monco/Mortimer filed a complaint on behalf of Zoltek against the U.S. Government (“the Government”) in the United States Court of Federal Claims (“the Court of Federal Claims”) alleging that the B-2 Bomber infringed the Zoltek Patent.

34. Northrup Grumman was the contractor that built the infringing B-2 Bomber, but 28 U.S.C. §1498(a) requires that a patent infringement case against the Government or its contractors be brought in the Court of Federal Claims and only against the Government.

35. From 1996 through 2001, Monco/Mortimer expended substantial efforts in representing Zoltek, including, comprehensive written discovery, reviewing produced documents, and taking and defending depositions. Significantly, Monco/Mortimer were constantly embroiled in continuous battles of several highly-contentious motions to compel as the Government was stonewalling them in responding to written discovery, document production, and deposition questioning.

36. In September 1999, Monco/Mortimer’s efforts resulted in Zoltek defeating the Government’s motion for summary judgment alleging that the Government was not liable for infringement under the doctrine of intervening rights for reissue patents.

37. In December 2000, following extensive briefing and a *Markman* hearing on the interpretation of multiple disputed patent claim terms, the Court of Federal Claims, in a written decision, accepted Monco/Mortimer’s interpretation of the disputed terms.

38. In the same December 2000 decision, following extensive briefing, the Court of Federal Claims denied the Government’s motion for summary judgment that the Zoltek Patent was invalid for being indefinite under 35 U.S.C. §112.

The F-22 Fighter and the First Interlocutory Appeal

39. During discovery regarding the infringement of the B-2 Bomber, Zoltek and Monco/Mortimer became aware that the Government was also infringing the Zoltek Patent in connection with the F-22 Fighter.

40. On May 24, 2001, Monco/Mortimer filed an Amended Complaint adding a count of infringement by the F-22 Fighter.

41. The Zoltek Patent claims are method claims and, with regard to the F-22 Fighter, all of the claimed steps of making the silicon carbide fibers were practiced in Japan, with the fibers either being processed into sheet products in Japan and sent to the U.S., or being sent to the U.S. for processing into sheet products.

42. On July 5, 2001, the Government filed a motion for summary judgment for noninfringement by the F-22 Fighter because, although the accused planes were assembled in the U.S., the steps of making and applying the carbide fibers to the sheets were all performed in Japan.

43. The Government's motion raised an issue of first impression regarding the interpretation of 28 U.S.C. § 1498(c) as it pertains to performing all of the steps of a patented method claim outside of the United States, but subsequently using the final product made by the patented method in the United States.

44. On December 13, 2001, at oral argument, the Court of Federal Claims agreed with the Government that, under 28 U.S.C. § 1498(c), there is no infringement of a method claim where all of the steps of the claimed method are performed outside of the United States, even though the final product made by those steps is used in the United States.

45. However, also at oral argument, the Court of Federal Claims requested additional briefing regarding the following issue: whether the Government can take and use the intellectual property of a person without compensating the person under the Taking Clause of the Fifth Amendment of the U.S. Constitution. This was also an issue of first impression.

46. The Court of Federal Claims, in its subsequent written decision dated March 14, 2002, formally set forth its holding and directives it enunciated at oral argument in 51 Fed.Cl. 829 (Fed.Cl. 2002)

47. On December 9, 2003, the Court of Federal Claims held that Zoltek did have a cause of action under the Fifth Amendment, and denied the Government's motion for summary judgment. 58 Fed. Cl. 688 (Fed. Cl. 2002).

48. On February 20, 2004, upon further briefing by Monco/Mortimer and the Government, the Court of Federal Claims certified both issues of first impression for interlocutory appeal to the U.S. Court of Appeals of the Federal Circuit ("the Federal Circuit").

49. On March 31, 2006, following extensive briefing and oral argument, the Federal Circuit affirmed the Court of Federal Claims and denied Zoltek's cause of action under 28 U.S.C. § 1498(c). The Federal Circuit also reversed the Court of Federal Claims and denied Zoltek's cause of action under the Fifth Amendment.

50. Because of the complexity of these two legal issues of first impression, the three judge panel of the Federal Circuit issued four separate opinions. (*Zoltek Corporation v. U.S.*, 442 F.3d 1345 (Fed. Cir. 2006)).

51. After their request for re-hearing *en banc* was denied, Monco/Mortimer filed a Petition for Writ of Certiorari to the United States Supreme Court that was supported by three amicus briefs. On June 11, 2007, the Supreme Court denied Zoltek's Petition.

The Litigation Continues Regarding the B-2 Bomber

52. Simultaneously with its efforts regarding the F-22 Fighter, Monco/Mortimer were also working on proving Zoltek's case against the B-2 Bomber which did not have the F-22 Fighter legal issues since the B-2 Bomber was made entirely in the United States.

53. During discovery, Monco/Mortimer subpoenaed Northrop Grumman (the B-2 Bomber contractor) for documents and depositions.

54. The Government and Northrop Grumman refused to provide any meaningful discovery, alleging that Monco/Mortimer did not have the requisite security clearances.

55. Thereafter, in 2006, Monco/Mortimer submitted to rigorous background checks, including the disclosure of highly personal information required to obtain top-secret clearances to review relevant documents.

56. Monco/Mortimer finally obtained top-secret clearances from the U.S. Government, but two months later, and for the first time in the decade-old case, the Government asserted the "state secret" privilege, and refused to produce documents or permit meaningful deposition testimony.

57. On May 22, 2007 the Government filed a notice formally invoking the state secret privilege, and Monco/Mortimer filed a voluminous motion to strike or limit the scope of the state secret privilege.

58. On February 13, 2009, in an unpublished sealed opinion, the Court of Federal Claims denied Monco/Mortimer's motion to strike or limit the state secret privilege.

Lockheed Martin is Named as a Defendant and the Second Interlocutory Appeal Regarding The F-22 Fighter

59. On July 9, 2007, because the Federal Circuit held that the Government could not be liable under 28 U.S.C. § 1498(c) or the Fifth Amendment regarding the F-22 Fighter,

Monco/Mortimer filed a motion to add the manufacturer of the F-22 Fighter, Lockheed Martin Corporation (“Lockheed”), as a defendant, and to transfer the F-22 portion of the case to the District Court in Georgia, where Lockheed manufactured large portions of the F-22 Fighter.

60. On January 23, 2009, following further contentious and voluminous briefing, the Court of Federal Claims granted Zoltek’s motion to name Lockheed as a defendant and transferred the F-22 Fighter portion of the case to the District Court of Georgia.

61. The Court’s decision to allow Lockheed to be a named-defendant raised another issue of first impression in this case-- whether a non-government entity could be liable for infringement under 28 U.S.C. § 1498(a) while engaged in Government authorized work.

62. On October 6, 2009, the Court of Federal Claims granted Lockheed’s petition for the second interlocutory appeal in this case -- asserting that Zoltek was not entitled to sue Lockheed separately under 28 U.S.C. § 1498(a).

63. On or about November 10, 2009, Zoltek, through Rummy, engaged the Green Jacobson law firm as new lead counsel on an hourly basis.

64. Plaintiffs continued to assist Green Jacobson in all aspects of the case, including in the briefing and oral argument preparation for the second *Zoltek Corp. v. U.S.* interlocutory appeal.

65. In October 2011, Zoltek, through Rummy, terminated Green Jacobson and re-engaged Monco/Mortimer as lead counsel in the case.

66. On March 14, 2012 the Federal Circuit, in an *en banc* decision, vacated its prior decision, and adopted Monco/Mortimer’s original argument and found the Government could be liable for infringement pursuant to 28 U.S.C. §1498(a) even though all of the steps of the method claims (making the carbide sheets) were not performed in the United States, as long as the F-22

Fighter was manufactured in the United States and used by or for the Government. (*Zoltek Corp. v. U.S.*, 672 F.3d 1309 (Fed. Cir. 2012) (*en banc*)).

67. Simultaneous with the second interlocutory appeal, the Government filed a motion for summary judgment in the Court of Federal Claims arguing that the Zoltek Patent was invalid for being obvious under 35 U.S.C. § 103.

68. On December 16, 2010, after multiple depositions of the parties' experts and more extensive briefing, the Court of Federal Claims denied the Government's motion for summary judgment of invalidity.

69. In October 2011, Monco/Mortimer and Zoltek agreed to modify the April 1996 Retainer Agreement wherein, prospectively, Monco/Mortimer and Wood Phillips were to be paid \$200/hour, in addition to Zoltek paying for out-of-pocket expenses. ("the 2011 Modification") As a result, the attorney contingency percentage was reduced.

Attempts to Settle the Case

70. With the Federal Circuit's *en banc* decision of March 14, 2012 stating that the Government could be liable for infringement of the F-22 Fighter, Monco/Mortimer recommended to Zoltek that an effort should be made to contact senior personnel at the Department of Defense to settle the case.

71. Zoltek engaged the Greenberg Traurig law firm in Washington, D.C. to lobby for legislative action relative to the state secret issue and, at the same time, investigate settlement options.

72. Monco/Mortimer strategized with Greenberg Traurig to (1) pursue settlement negotiations, and (2) draft proposed legislation to address the roadblocks resulting from the state secret privilege from the Government's belated assertion of the state secret privilege.

73. Simultaneously, Greenberg Traurig held multiple meetings with the general counsel for the Air Force and the Government's trial counsel.

74. However, believing the Zoltek Patent was invalid, the Government decided to end settlement discussions.

The Trial On The Validity Of The Zoltek Patent

75. On October 12, 2012, following the Federal Circuit's *en banc* decision on the F-22 Fighter, the Court of Federal Claims issued a discovery scheduling order and Monco/Mortimer served formal discovery requests regarding the F-22 Fighter.

76. On May 24, 2013, the Government again invoked the state secret privilege regarding the discovery related to the F-22 Fighter, just as it did before regarding the B-2 Bomber.

77. On June 28, 2013, Monco/Mortimer prepared and filed a voluminous motion to strike or limit the scope of the Government's state secret privilege regarding the F-22 Fighter.

78. The Court of Federal Claims scheduled a trial for November 4-6, 2013 solely on the issue of the Zoltek Patent's validity.

79. On March 31, 2014, following the three day trial, the Court of Federal Claims held the Zoltek Patent to be invalid as obvious under 35 U.S.C. § 103 and for lack of written description under 35 U.S.C. § 112.

80. Despite Zoltek's refusal to pay anything, Monco/Mortimer briefed and argued the appeal to the Federal Circuit.

81. On February 19, 2016, in a unanimous decision, the Federal Circuit reversed the Court of Federal Claims and held the Zoltek Patent not to be invalid under either 35 U.S.C. § 103 or 35 U.S.C. § 112. (*Zoltek Corporation v. United States*, 815 F.3d 1302 (Fed. Cir. 2016)).

Toray Acquires Zoltek

82. Between the trial and the Federal Circuit's reversal on the validity issues, Defendant Toray Industries purchased Zoltek for approximately \$600 million, including all rights to the Zoltek Patent and any recovery from the lawsuit against the Government.

83. Defendant Romy, the founder and largest shareholder of Zoltek, owned approximately eighteen percent (18%) of Zoltek and received payment from the sale to Toray in excess of \$100 million as Zoltek's largest shareholder.

Defendants Terminated Monco/Mortimer after the Appeal

84. Following their successful appeal in 2016, Monco/Mortimer provided legal advice and recommended settlement strategies, including mediation, in several memoranda to Zoltek and Romy.

85. Below are some of the major events since 1996 (see Exhibit 1, Docket Sheet having 46 pages and 551 entries):

- a. Monco/Mortimer prevailed on the Government's motion for summary judgment regarding the issue of intervening rights;
- b. Monco/Mortimer obtained a favorable decision on claim interpretation;
- c. Monco/Mortimer defeated the Government's summary judgment motion that the Zoltek Patent was invalid for being indefinite 35 U.S.C. §112;
- d. Monco/Mortimer persevered through three complex issues of first impression regarding 28 U.S.C. 1498(c), including two interlocutory appeals to the Federal Circuit and successfully convinced the Federal Circuit, *en banc*, to reverse its prior decision;

- e. Monco/Mortimer obtained top-secret security clearance for discovery purposes;
- f. Monco/Mortimer defeated the Government's summary judgment motion that the Zoltek Patent was invalid for being obvious under 35 U.S.C. §103;
- g. Monco/Mortimer conducted a trial on the issue of patent invalidity;
- h. Monco/Mortimer were successful on appeal to hold that the Zoltek Patent was not invalid;
- i. Monco/Mortimer conducted comprehensive written discovery, reviewed produced documents, and took and defended depositions around the country between 1998 and 2012;
- j. Monco/Mortimer were constantly embroiled in a continuous battle of several highly-contentious motions to compel as the Government was stonewalling them in responding to written discovery, document production and deposition questioning through its invocation of the state secret privilege; and
- k. Monco/Mortimer coordinated with the Greenburg Traurig law firm and assisted in several meetings regarding potential settlement.

86. Zoltek's outside attorneys, Thompson Coburn LLP, scheduled a meeting at its St. Louis offices for July 16, 2016 to discuss the Zoltek Litigation strategy.

87. Upon information and belief, Thompson Coburn had been Zoltek's attorneys for more than 10 years and possibly as long as 20 years.

88. Upon information and belief, Mark Hearne II of Arent Fox had previously represented Rummy in other matters.

89. The following individuals were present at the July 16 meeting in-person or by telephone:

- (a) Monco and Mortimer representing Zoltek;
- (b) David B. Jenkins and other attorneys of Thompson Coburn representing Zoltek and Toray;
- (c) Mark Hearne II (by phone) of Arent Fox representing Rummy;
- (d) Zsolt Rummy; and
- (e) Several officers of Toray (in-person and by telephone).

90. At the meeting, strategy was discussed and Thompson Coburn told Monco/Mortimer that the April 1996 Retainer Agreement was being terminated, assured Monco/Mortimer that they would be “part of the team” going forward, requested Monco/Mortimer to have all their files sent to Hearne, and proposed going forward, that Monco/Mortimer would be paid their full hourly rate for work performed.

91. After the meeting, Zoltek and Rummy refused to pay any portion of the overdue payment for Monco/Mortimer’s reduced hourly fee and further refused to reimburse Monco/Mortimer for any of the incurred out-of-pocket expenses, together totaling \$257,000.

92. On July 26, 2016, Monco/Mortimer were terminated as counsel in the Zoltek Litigation and Hearne was substituted as lead counsel for Zoltek the same day. Jenkins and other lawyers from Thompson Coburn also filed appearances.

93. Thompson Coburn terminated Monco/Mortimer from any further representation of Zoltek in any capacity by letter dated September 9, 2016.

Defendants Settled The Litigation Weeks After Terminating Monco/Mortimer

94. Mediation in the case was scheduled for October 12-13, 2016, approximately ten weeks after Monco/Mortimer were terminated.

95. Monco/Mortimer told Zoltek's attorney, David Jinkins of Thompson Coburn that Monco/Mortimer retained all rights to recovery under the April 1996 Retainer Agreement, the 2011 Modification or *quantum meruit* for their work over 21 years in the lawsuit.

96. Jinkins contacted Monco/Mortimer and their counsel several times before and during the mediation process and demanded that Monco and Mortimer provide a specific dollar amount, not percentage, that Monco/Mortimer would accept for their successful and continuous 21 years of work.

97. During the mediation, Jinkins, in attempting to get Monco/Mortimer to state the specific dollar amount from the recovery they would accept, telephoned Monco/Mortimer and falsely represented to Monco/Mortimer that the Government was not likely to pay more than \$4 million to settle the case. Jinkins was steadfast in his refusal to disclose the amount Zoltek demanded to settle the case.

98. Monco/Mortimer repeated that they retained all rights to recovery under the April 1996 Retainer Agreement, the 2011 Modification and/or *quantum meruit*.

99. On December 2, 2016, a tentative agreement was reached between Zoltek and the Government regarding settlement, and the litigation was stayed pending final approval by the Government.

100. On March 20, 2017 Judgment was entered by the Court of Federal Claims ordering the Government to pay Zoltek \$20 million in settlement of all claims for infringement of the Zoltek Patent.

COUNT I
TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC ADVANTAGE
(Against Rummy, Toray, Thompson Coburn, Arent Fox)

101. Monco/Mortimer reallege and restate paragraphs 1-100.

102. Monco/Mortimer had an attorney/client relationship with Zoltek from which they expected to earn substantial legal fees.

103. Rummy, Toray, Thompson Coburn and Arent Fox were aware of the relationship as alleged in the preceding paragraph.

104. Rummy, Thompson Coburn and Arent Fox intentionally induced Zoltek and Toray to discharge Monco/Mortimer as its attorneys.

105. Zoltek in fact discharged Monco/Mortimer as its attorneys.

106. Upon information and belief, Thompson Coburn and/or Arent Fox received, or expect to receive under an unlawful agreement at least a portion of the legal fees and out-of-pocket expenses that Monco/Mortimer expected to earn and were entitled to have repaid.

107. Upon information and belief, Zoltek, Rummy, and/or Toray received, or expect to receive under an unlawful agreement at least a portion of the legal fees and out-of-pocket expenses that Monco/Mortimer expected to earn and have repaid.

108. By reason of the foregoing, Rummy, Toray, Thompson Coburn and Arent Fox tortiously interfered with Monco/Mortimer's prospective economic advantage for their own benefit.

109. Rummy, Toray, Thompson Coburn and Arent Fox's conduct damaged Monco/Mortimer which did not receive any portion of the legal fees and out-of-pocket expenses that they expected to ear and be repaid.

110. Rummy, Toray, Thompson Coburn and Arent Fox's conduct was willful and wanton.

COUNT II
CONSPIRACY
(Against Rummy, Toray, Thompson Coburn, Arent Fox)

111. Monco/Mortimer reallege and restate paragraphs 1-110.

112. Upon information and belief, two or more of the Defendants knowingly had an agreement to participate in the unlawful and tortious acts set forth in the preceding paragraphs, including Count I.

113. The Defendants knowingly and intentionally committed the act of not paying Monco/Mortimer any portion of the legal fees they were expected to be paid.

114. An injury was caused as a result of the Defendants' agreement not to pay Monco/Mortimer any portion of the legal fees or out-of-pocket expenses they expected to earn and to have repaid, and in fact, Monco/Mortimer did not receive any portion of the legal fees or out-of-pocket expenses it expected to earn and have repaid.

115. Defendants' conduct was willful and wanton.

COUNT III
RECOVERY UNDER QUANTUM MERUIT
(Against Zoltek and Toray)

116. Monco/Mortimer reallege and restate paragraphs 1-115.

117. Monco/Mortimer performed services to benefit Zoltek and Toray which received some or all of the \$20 million as a settlement from the Government.

118. Monco/Mortimer performed these services nongratically for more than 20 years.

119. Zoltek and Toray accepted the services.

120. The Zoltek Litigation was a difficult patent infringement case involving highly contentious and extensive discovery, claim construction, a trial on validity, four motions for summary judgment, three issues of first impression, including constitutional issues resulting in two interlocutory appeals to the Federal Circuit, and a third appeal to the Federal Circuit.

121. Monco/Mortimer demonstrated extraordinary fidelity, competency and ingenuity in representing Zoltek during the entire twenty-one (21) year period of the Zoltek Litigation.

122. Over 21 years in the case, Plaintiffs expended almost 13,000 hours in attorneys' time representing Zoltek. In addition, an enormous amount of Wood Phillips staff hours were expended on behalf of Zoltek.

123. Monco/Mortimer submitted themselves to the mandatory rigorous disclosure process and waived their privacy rights in order to obtain top secret security clearances to maximize their ability to represent Zoltek in the infringement litigation against the Government.

124. Of the 551 entries on the docket of the Court of Federal Claims from March 1996 through March 2017, 535 entries were made when Monco/Mortimer represented Zoltek either as lead counsel or, for a relatively brief period, as support counsel in the litigation during the 21 years of representation.

125. Sixteen (16) docket entries were made when Hearne was substituted in as lead counsel for Zoltek in July 2016. Moreover, not one of the sixteen (16) docket entries filed by Hearne during the months he represented Zoltek was substantive.

126. Zoltek and Toray's conduct was willful and wanton.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Dean A. Monco, John S. Mortimer, and Wood, Phillips, Katz, Clark & Mortimer pray for the entry of judgment in their favor as follows:

- A. Compensatory damages in an amount to be determined at trial;
- B. Repayment of outlays to be determined at trial;
- C. Punitive damages to be determined at trial;
- C. Pre-judgment interest;
- D. Attorney fees;
- E. Costs of suit; and
- F. Such other and further relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiffs demand a jury trial on all issues triable to a jury.

DEAN A. MONCO, JOHN S. MORTIMER
and WOOD, PHILIPS, KATZ, CLARK &
MORTIMER

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