

FILED
ALAMEDA COUNTY
DEC - 4 2013
CLERK OF THE SUPERIOR COURT
By ~~_____ A. Tumonong _____~~

IN THE SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA – OAKLAND DIVISION

ENERGY RECOVERY, INC.,

Plaintiff,

vs.

LEIF J. HAUGE, ISOBARIC
STRATEGIES, INC., TRISTAN
NILLO, and JAMES COYLE,

Defendants.

Case No. RG11 571227

SPECIAL VERDICT FORM

INSTRUCTIONS

Please answer each of the following questions in the order they are presented. In answering the following questions, you must follow the instructions provided by the Court. Nine of you must agree to an answer. However, the same nine jurors do not have to agree to every answer.

You may find that Energy Recovery prevails under multiple claims. For example, if you find Energy Recovery is entitled to the compensation it paid to Coyle and Nillo while they were simultaneously employed by Hauge and Isobaric under two of its claims, Energy Recovery is only entitled to recover that compensation once, not twice. You should still include the applicable damages to all claims in which you find for Energy Recovery, and the Court will determine the final amount to avoid any double recovery.

Once you have completed this form, the jury foreperson should sign and date this verdict form and return it to the Court.

I. CLAIM FOR BREACH OF CONTRACT

1. Did Tristan Nillo breach any contract with Energy Recovery, Inc.?

YES NO

2. If you checked "YES" to Question No. 1, what are the damages, if any, caused by Tristan Nillo's breach of contract?

a. Compensation paid by Energy Recovery to Nillo while he was simultaneously employed by Hauge and Isobaric:

\$ ZERO

b. Contracts Isobaric and Hauge made for the sale of their XPR devices: \$ ZERO

3. Did James Coyle breach any contract with Energy Recovery, Inc.?

YES NO

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4. If you checked "YES" to Question No. 3, what are the damages, if any, caused by James Coyle's breach of contract?
- a. Compensation paid by Energy Recovery to Nillo while he was simultaneously employed by Hauge and Isobaric:
\$ ZERO
 - b. Contracts Isobaric and Hauge made for the sale of their XPR devices: \$ ZERO

II. CLAIM FOR INTENTIONAL INTERFERENCE WITH CONTRACTS

5. Did Isobaric Strategies, Inc. intentionally interfere with any Energy Recovery, Inc. contract?

_____ YES NO

6. If you checked "YES" to Question No. 5, what are the damages, if any, caused by Isobaric Strategies, Inc.'s intentional interference with contract? The damages claimed by Energy Recovery include the following:

- a. Compensation paid by Energy Recovery to Coyle while he was simultaneously employed by Hauge and Isobaric:
\$ N/A
- b. Compensation paid by Energy Recovery to Nillo while he was simultaneously employed by Hauge and Isobaric:
\$ N/A
- c. Contracts Isobaric and Hauge made for the sale of their XPR devices: \$ N/A

7. Did Leif Hauge intentionally interfere with any Energy Recovery, Inc. contract?

_____ YES NO

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8. If you checked "YES" to Question No. 7, what are the damages, if any, caused by Leif Hauge's intentional interference with contract? The damages claimed by Energy Recovery include the following:

- a. Compensation paid by Energy Recovery to Coyle while he was simultaneously employed by Hauge and Isobaric:
\$ N/A
- b. Compensation paid by Energy Recovery to Nillo while he was simultaneously employed by Hauge and Isobaric:
\$ N/A
- c. Contracts Isobaric and Hauge made for the sale of their XPR devices: \$ N/A

III. CLAIM FOR BREACH OF DUTY OF LOYALTY

9. Did Tristan Nillo breach any duty of loyalty with Energy Recovery, Inc.?

_____ YES NO

10. If you checked "YES" to Question No. 9, what are the damages, if any, caused by Tristan Nillo's breach of duty of loyalty? The damages claimed by Energy Recovery include the following:

- a. Compensation paid by Energy Recovery to Nillo while he was simultaneously employed by Hauge and Isobaric:
\$ N/A
- b. Contracts Isobaric and Hauge made for the sale of their XPR devices: \$ N/A

11. If you checked "YES" to Question No. 9, do you find that Tristan Nillo participated in a conspiracy with any of the defendants to breach his duty of loyalty to ERI?

_____ YES _____ NO N/A

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12. If you checked "YES" to Question No. 11, then identify which of the following defendants you find participated in the conspiracy with Tristan Nillo to breach his duty of loyalty:

[Check All That Apply]

Isobaric Strategies, Inc. N/A
Leif Hauge N/A
James Coyle N/A

13. Did James Coyle breach any duty of loyalty with Energy Recovery, Inc.?

 YES NO

14. If you checked "YES" to Question No. 13, what are the damages, if any, caused by James Coyle's breach of duty of loyalty? The damages claimed by Energy Recovery include the following:

- a. Compensation paid by Energy Recovery to Coyle while he was simultaneously employed by Hauge and Isobaric:
\$ N/A
- b. Contracts Isobaric and Hauge made for the sale of their XPR devices: \$ N/A

15. If you checked "YES" to Question No. 13, do you find that James Coyle participated in a conspiracy with any of the defendants to breach his duty of loyalty to Energy Recovery, Inc.?

 YES NO N/A

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16. If you checked "YES" to Question No. 15, then identify which of the following defendants you find participated in the conspiracy with James Coyle to breach his duty of loyalty:

[Check All That Apply]

Isobaric Strategies, Inc.

N/A

Leif Hauge

N/A

Tristan Nillo

N/A

IV. CLAIM FOR INDUCING BREACH OF DUTY OF LOYALTY

17. Did Isobaric Strategies Inc. induce Tristan Nillo or James Coyle to breach any duty of loyalty Tristan Nillo or James Coyle had with Energy Recovery, Inc.?

_____ YES NO

18. If you checked "YES" to Question No. 17, what are the damages, if any, caused by Isobaric Strategies Inc.'s inducement of the breach of duty of loyalty? The damages claimed by Energy Recovery include:

- a. Compensation paid by Energy Recovery to Coyle while he was simultaneously employed by Hauge and Isobaric:

\$ N/A

- b. Compensation paid by Energy Recovery to Nillo while he was simultaneously employed by Hauge and Isobaric:

\$ N/A

- c. Contracts Isobaric and Hauge made for the sale of their XPR devices: \$ N/A

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19. Did Leif Hauge induce Tristan Nillo or James Coyle to breach any duty of loyalty Tristan Nillo or James Coyle had with Energy Recovery, Inc.?

_____ YES NO

20. If you checked "YES" to Question No. 19, what are the damages, if any, caused by Leif Hauge's inducement of the breach of duty of loyalty? The damages claimed by Energy Recovery include:

a. Compensation paid by Energy Recovery to Coyle while he was simultaneously employed by Hauge and Isobaric:

\$ N/A

b. Compensation paid by Energy Recovery to Nillo while he was simultaneously employed by Hauge and Isobaric:

\$ N/A

c. Contracts Isobaric and Hauge made for the sale of their XPR devices: \$ N/A

V. CLAIM FOR INTENTIONAL MISREPRESENTATION

21. Did James Coyle commit intentional misrepresentation?

YES _____ NO

22. If you checked "YES" to Question No. 21, what are the damages, if any, caused by the intentional misrepresentation? The damages claimed by Energy Recovery are the amounts of compensation paid by Energy Recovery to Coyle following the April 14, 2011 interview regarding his employment with Hauge and Isobaric:

\$ 2,285⁰⁰/_{XX}

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23. If you checked "YES" to Question No. 21, do you find that James Coyle participated in a conspiracy with any of the defendants to commit intentional misrepresentation?

_____ YES NO

24. If you checked "YES" to Question No. 23, then identify which of the following defendants you find participated in the conspiracy with James Coyle to commit intentional misrepresentation:

[Check All That Apply]

Isobaric Strategies, Inc. N/A

Leif Hauge N/A

Tristan Nillo N/A

VI. CLAIM FOR MISAPPROPRIATION OF TRADE SECRETS

25. Did Isobaric Strategies, Inc. misappropriate any trade secrets of Energy Recovery, Inc.?

_____ YES NO

26. Did Leif Hauge misappropriate any trade secrets of Energy Recovery, Inc.?

_____ YES NO

27. Did Tristan Nillo misappropriate any trade secrets of Energy Recovery, Inc.?

_____ YES NO

28. Did James Coyle misappropriate any trade secrets of Energy Recovery, Inc.?

_____ YES NO

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29. If you checked "YES" to any question in Questions Nos. 25-28, what is the actual loss incurred by Energy Recovery, Inc., if any, caused by the misappropriation of trade secrets? The actual loss claimed by Energy Recovery includes the following:

a. Compensation paid by Energy Recovery to Coyle while he was simultaneously employed by Hauge and Isobaric:

\$ N/A

b. Compensation paid by Energy Recovery to Nillo while he was simultaneously employed by Hauge and Isobaric:

\$ N/A

30. If you found that Energy Recovery incurred any actual losses that were caused by the misappropriation of trade secrets in response to Question No. 29, then state below how the total actual losses, set forth in response to Question No. 29, should be allocated to each of the defendants:

Portion of Damages caused by Isobaric Strategies, Inc. \$ N/A

Portion of Damages caused by Hauge \$ N/A

Portion of Damages caused by Nillo \$ N/A

Portion of Damages caused by Coyle \$ N/A

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31. If you checked "YES" to any question in Questions Nos. 25-28, what is the total unjust enrichment gained by Defendants as the result of the misappropriation of trade secrets, and not taken into account when computing actual loss incurred by Energy Recovery, Inc. caused by the misappropriation of trade secrets? The unjust enrichment claimed by Energy Recovery includes the following: (1) Compensation paid by Isobaric and Hauge to Nillo and Coyle while they were still employed by Energy Recovery; (2) Compensation paid by Isobaric and Hauge to Nillo and Coyle after they left Energy Recovery; (3) Contracts Isobaric and Hauge made for the sale of their XPR devices; and (4) Energy Recovery's research and development costs.

Unjust enrichment gained by Isobaric Strategies, Inc. \$ N/A

Unjust enrichment gained by Hauge \$ N/A

Unjust enrichment gained by Nillo \$ N/A

Unjust enrichment gained by Coyle \$ N/A

32. If you checked "YES" to any question in Questions Nos. 25-28, do you find by clear and convincing evidence that any of the defendants engaged in willful and malicious misappropriation of Energy Recovery, Inc.'s trade secrets?

_____ YES _____ NO N/A

33. If you checked "YES" to Question No. 32, then identify which of the following defendants you find by clear and convincing evidence engaged in willful and malicious misappropriation of Energy Recovery's trade secrets:

[Check All That Apply]

Isobaric Strategies, Inc. N/A

Leif Hauge N/A

Tristan Nillo N/A

James Coyle N/A

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34. If you checked "YES" to any question in Questions Nos. 25-28, do you find that any of the defendants participated in a conspiracy to misappropriate ERI's trade secrets?

_____ YES _____ NO N/A

35. If you checked "YES" to Question No. 34, then identify which of the following defendants you find participated in the conspiracy to misappropriate ERI's trade secrets:

[Check All That Apply]

Isobaric Strategies, Inc. N/A

Leif Hauge N/A

Tristan Nillo N/A

James Coyle N/A

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VIII. ADDITIONAL FINDINGS

36. If you checked "YES" to Questions No. 7 and/or 19, do you find by clear and convincing evidence that Leif J. Hauge engaged in the conduct with malice, oppression or fraud?

_____ YES _____ NO *N/A*

37. If you checked "YES" to Question No. 5 and/or 17, do you find by clear and convincing evidence that Isobaric Strategies, Inc. engaged in the conduct with malice, oppression or fraud?

_____ YES _____ NO *N/A*

38. If you checked "YES" to Question No. 9, do you find by clear and convincing evidence that Tristan Nillo engaged in the conduct with malice, oppression or fraud?

_____ YES _____ NO *N/A*

39. If you checked "YES" to Question Nos. 13 and/or 21, do you find by clear and convincing evidence that James Coyle engaged in the conduct with malice, oppression or fraud?

_____ YES NO

Signed: *Spu Jackson*
Presiding Juror

Dated: *December 4*, 2013

**AFTER THE VERDICT FORM HAS BEEN SIGNED,
DELIVER THE VERDICT FORM TO THE COURTROOM ATTENDANT**