

TOP 100 Verdicts of 2006

NINETEEN

TORTIOUS INTERFERENCE

Contracts — Fraud

Construction co. accused firm of interference with contract

VERDICT **\$98,800,000**

CASE Conex International Corp. v. Fluor Enterprises Inc. and Leslie Antalfy, No. B-0164082
 COURT Jefferson County District Court, 60th, TX
 JUDGE Gary Sanderson
 DATE 11/20/2006

PLAINTIFF
 ATTORNEY(S) Randal Cashiola (lead), Chambers, Templeton, Cashiola and Thomas, Beaumont, TX
 Kenneth R. Chambers, Chambers Templeton Cashiola & Thomas, Beaumont, TX
 Richard Hogan, Pillsbury Winthrop Shaw & Pittman LLP, Houston, TX
 Jon B. Burmeister, Moore Landrey, L.L.P., Beaumont, TX

DEFENSE
 ATTORNEY(S) David Cindric, Vinson & Elkins, LLP, Houston, TX
 James L. Gascoyne, Gascoyne & Bullion, Sugar Land, TX
 Russ Heald, Adams & Boswell, P.C., Beaumont, TX
 Penny Nicholson, Vinson & Elkins, LLP, Houston, TX
 Gwen Samora, Vinson & Elkins, LLP, Houston, TX
 Marie Yeates, Vinson & Elkins, LLP, Houston, TX

FACTS & ALLEGATIONS Plaintiff Conex International Corp., a Beaumont, Texas-based construction firm, had a 15-year relationship with Atofina (now Total Petrochemicals USA Inc.), a petrochemical company. Conex provided general mechanical contractor work at Atofina's Port Arthur refinery. In June 2001, Atofina awarded Conex a \$13.8 million capital improvement turnaround project.

One part of the 2001 turnaround involved the removal and replacement of a reactor head. According to Conex, the reactor head manufacturer produced the wrong size, but Conex tried to work with Atofina to correct the problem.

Atofina brought in Irving-based engineering company Fluor Enterprises Inc. to advise it on how to attach the head. Fluor also provided technical advice on post-weld heat treatments for other welds that involved attachments to pressurized petrochemical vessels.

Conex claimed that when Fluor gave its technical opinions to Atofina about the post-weld treatments for the pressurized vessels, Fluor's employees made disparaging comments about Conex's expertise and ability to make those kinds of welds. Specifically, Fluor told Atofina that Conex was trying to perform post-weld heat treatment on the pressure vessel attachments without adequate engineering backup and

without confirming the procedure's safety.

Conex alleged that, based on Fluor's recommendations about the pressure vessel attachments, Conex finished that part of the project 11.5 days late and incurred \$2.5 million in extra costs.

After the 2001 project, the amount of work Conex did for Atofina decreased by about 90 percent, while Fluor's work increased.

In 2003, Conex sued Fluor and its project manager, Leslie Antalfy, for tortious interference with contractual relationships as well as fraud.

While the lawsuit was pending, Atofina awarded Fluor a contract for a \$1 billion expansion project of its coker unit, called the "Deep Conversion Project." Although Atofina gave Fluor a list of approved local contractors that included Conex, Fluor put Conex on a "warnings and alert" list, which caused Atofina to drop Conex from its approved contractors list. According to defense counsel Fluor included Conex on its list of approved contractors, but Atofina removed the company from the list.

As trial approached, Conex amended its complaint to clarify that a part of its damages fell within its cause of action for tortious interference with existing contractual relations, while another part fell within the cause of action for tortious interference with prospective contractual relations.

The defendants denied that they engaged in any acts constituting business disparagement, fraud or tortious interference. They also claimed the loss of Atofina's business was Conex's fault. In addition, the defense alleged that an earlier settlement between Conex and Atofina over the 2001 project, which was not part of this lawsuit, acted as a waiver and estoppel.

INJURIES/DAMAGES Conex sought the following damages: (1) the cost of the post-weld treatment extras on the 2001 turnaround project, in an amount over \$2.5 million, less amounts paid by Atofina (defense counsel reported that the amount was \$2.1 million); (2) a minimum of \$11,941,570 in profits lost for Atofina work from 2002 to 2011 (excluding the Deep Conversion Project); (3) a minimum of \$46,646,972 and a maximum of \$83,316,012 in profits lost from the Deep Conversion project; and (4) punitive damages of \$80 million.

PLAINTIFF
 EXPERT(S) William O'Donnell, Ph.D., P.E., engineering, Pittsburgh, PA
 Charles E. Hawkins, Ph.D., economics, Beaumont, TX
 Behzad Kasraie, Ph.D., P.E., engineering, Pittsburgh, PA

DEFENSE
 EXPERT(S) Robert Sims, engineering, Liberty Corner, NJ
 Jeffrey Spilker, CPA, economics, Houston, TX