

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

POLAR MOLECULAR
HOLDING CORPORATION,
Delaware Corporation,

Counter-Plaintiff & Third Party Plaintiff,

Case Number 07-12425-BC

Honorable Thomas L. Ludington

vs.

PETROLEUM ENHANCER, LLC,

Counter-Defendant,

and

AFFILIATED INVESTMENTS, LLC,
RICHARD SOCIA, CARL HILL,
BRUCE BECKER, A. RICHARD NELSON,
DOLORES COY-DEJONGH,
ROBERT MACKENZIE,
jointly and severally liable,

Third Party Defendants.

POLAR MOLECULAR HOLDING CORPORATION'S AMENDED
COUNTER-COMPLAINT AND THIRD PARTY COMPLAINT
AND DEMAND FOR JURY TRIAL

NOW COMES the Counter & Third-Party Plaintiff, Polar Molecular Holding Corporation (in addition to its legal name it is hereinafter referred to either as Plaintiff or Plaintiffs) by and through its attorneys, THE MASTROMARCO FIRM and hereby complains against the Counter & Third-

Party Defendants (hereinafter referred to jointly as Defendants and separately as Defendant) stating more fully as follows:

COMMON ALLEGATIONS

The Parties

1. That at all times material hereto, Plaintiff, POLAR MOLECULAR HOLDING CORPORATION (hereinafter referred to either as Plaintiff or Plaintiffs) is a Delaware corporation with its headquarters located in Colorado.
2. That at all times material hereto Plaintiff was a publicly traded company.
3. Counter-Defendant Petroleum Enhancer LLC is a Michigan Limited Liability Corporation doing business in the State of Michigan.
4. Third-Party Defendant Affiliated Investments, LLC is a Michigan Limited Liability Corporation doing business in the State of Michigan.
5. Third Party Defendant Richard Socia resides and does business in the State of Michigan.
6. Third Party Defendant Bruce Becker resides and does business in the State of Michigan.
7. Third Party Defendant Robert MacKenzie resides and does business in the State of Michigan.
8. Third-Party Defendant A. Richard Nelson resides and does business in the State of Michigan.

9. Third-Party Defendant Dolores Coy-DeJongh resides and does business in the State of Michigan.
10. Third-Party Defendant Carl Hill is a resident of West Virginia and Michigan and does business in the State of Michigan.

Jurisdiction & Venue

11. This Court has jurisdiction based upon the diversity of the parties pursuant to 28 U.S.C § 1332.
12. Plaintiffs' cause of action arises, in part, from Defendants' breach of their fiduciary duties towards the Plaintiff along with tortious interference.
13. The amount in controversy exceeds \$75,000.00 exclusive of costs and attorney fees.
14. Accordingly, this Court has jurisdiction and venue is proper.

Plaintiffs' History

15. The Plaintiff is in the petroleum additives business.
16. The Plaintiff, in part, seeks to obtain, as part of the petroleum additives business, patents which were obtained and were entrusted to Polar Molecular Corporation (a wholly owned subsidiary of Plaintiff but which is a separate corporate entity not to be confused with the Plaintiff) and which Defendants have wrongfully acquired in breach of their fiduciary duty to the Plaintiff.
17. Historically, Plaintiffs' retail customers have included Harley-Davidson Motorcycle Company, Mercury Marine, and the Amway Corporation.

18. Historically, Plaintiffs' also have developed business, market, research and licensing agreements with industry leaders including The Dow Chemical Company, Pfizer, Inc., The Ford Motor Company, and Total.

Defendants' Fiduciary Relationships with Plaintiff
& Access to Confidential Information

19. Defendant Socia was Plaintiff's Secretary and Director from July of 2003 until April of 2007.
20. Defendant Socia is also one of Plaintiff's stockholder, directly owning 2,020,180 shares plus 300,000 options to purchase shares.
21. Defendant Socia is also a controlling stockholder, insider, director and fiduciary of Petroleum Enhancer, LLC.
22. Defendant Socia founded Petroleum Enhancer, LLC on March 29, 2007, while still secretary and a member of Plaintiff's Board of Director.
23. Defendant Hill has been a consultant, fiduciary and insider of Plaintiff, since January of 2006, and Defendant Hill owns 2,000,000 options to purchase shares of Polar Molecular Holding Corporation common stock for which he was paid pursuant to his obligations to secure a \$5 million financing for Plaintiff and to develop profitable revenues for Plaintiff's products in the trucking and truck stop industries.
24. Defendant Hill is also a controlling stockholder, insider, director and fiduciary of Petroleum Enhancer, LLC.

25. At all times relevant herein, Defendants Socia and Hill were provided extensive confidential information of Plaintiffs' products, market, financial, business strategies, legal strategies, litigation strategies, and complaints filed with the SEC.
26. At all times relevant herein, Defendants Socia and Hill also were provided confidential research and testing results on Plaintiffs' products by major industry entities including TotalFinaElf, the largest oil refiner in Europe.
27. At all times relevant herein, Defendants Socia and Hill also were provided confidential information in the context of a \$30 million dollar forecast by TotalFinaElf for purchases of Plaintiffs' products conditional on Plaintiff performing its part of a joint marketing agreement with Total.
28. Defendants Socia and Hill are aware of all details concerning Polar Molecular Corporation's debt with Affiliated Investments secured by intellectual property, patents and trademarks entrusted to Polar Molecular Corporation by Plaintiff.
29. Defendant Becker has been an insider and stockholder of Plaintiffs since July 2003 until the present time and owns 4,424,391 shares of Polar Molecular Holding Corporation common stock.
30. Defendant Becker is also a controlling shareholder, insider, director and fiduciary of Petroleum Enhancer, LLC.

31. Defendant Becker and his vice president, Karen Dobleske of Affiliated Investment, LLC, also have in their possession the same confidential information referred to above relating to Defendants Socia and Hill.
32. Defendant Becker and his vice president are well aware of Defendant Socia's role as a member of Plaintiffs' board of directors and Defendant Hill's role as a consultant to Plaintiffs.
33. Defendant MacKenzie has been a director of Polar Molecular Holding Corporation since 2003 and resigned from the Board of Directors at the demand of a majority of Board members in July of 2007, stating that, "the company wasn't going anywhere".
34. Defendant MacKenzie has been an insider and fiduciary with Plaintiffs since 2003, and has the same confidential information referred to above.
35. Defendant MacKenzie owns 854,554 shares of Polar Molecular Holding Corporation common stock.
36. Defendant Nelson is a co-founder of Plaintiffs and co-inventor of some of Plaintiffs' patented products.
37. Defendant Nelson has been responsible for Quality Assurance matters including product formulation with Plaintiff's contract manufacturers since December of 1994.
38. Defendant Nelson is an insider and a fiduciary of Plaintiffs and owns 3,423,398 shares of Polar Molecular Holding Corporation common stock, and has the same confidential information referred to above.

39. Defendant Nelson is also an agent of Petroleum Enhancer, LLC.
40. Defendant Coy-DeJongh was an insider and fiduciary of Plaintiff.
41. Defendant Coy-DeJongh owns approximately 1 million shares in Polar Molecular Holding Corporation and has the same confidential information referred to above.
42. Defendant Coy-DeJongh is currently an agent of Petroleum Enhancer, LLC.

Defendants' Breach of Fiduciary Duties and Interference

43. That all of the confidential information discussed in this Complaint were learned and discovered by the Defendants at a time in which they owed a fiduciary duty to the Plaintiff.
44. In addition to the above-mentioned information, Defendants Socia, Hill, Becker, Nelson, Coy-DeJongh and MacKenzie were aware of Plaintiffs' \$10 million preferred stock offering and Defendants Socia, MacKenzie and Nelson as directors voted for the offering in August of 2006.
45. The Defendants knew and had confidential and privileged information that the \$10 million preferred stock offering was needed by Plaintiff in order for Plaintiff to pay off debts and obligations to the extent in which they existed, grow and diversity as a company and development and thus increase an environment in which Plaintiff would increase revenue resulting in an environment in which share values would increase.

- A. As an example, the Plaintiff intended to fund a retail e-commerce subsidiary (i.e. Polar E-Commerce, Inc.) a Colorado Corporation formed in 2006 which, if funded by portion of the \$10,000,000.00, would have served as a retail outlet for an assortment of products including, but not limited to, products manufactured by Plaintiff.
- B. As another example, had every intention of retaining the patents that had been entrusted to its subsidiary Polar Molecular Corporation, and, at a minimum, would have been able to outbid and obtain for itself the patents offered for sale at auction and purchased by Defendants during the course of the litigation.
- C. As another example, Plaintiff intended to diversify into new products beyond those entrusted and conducted by Polar Molecular Corporation.
- D. As another example, Plaintiff intended to purchase additional businesses and product lines including products similar to the products manufactured by Polar Molecular Corporation.
- E. That the Plaintiff intended to develop new products similar to the products manufactured by Polar Molecular Corporation.
- F. That the Plaintiff intended to use and needed the financing as means of raising additional monies from investors and to purchase other companies.

G. That the Plaintiff intended to use and needed the financing to bring its SEC filings current, and, in fact, ultimately Plaintiff lost its securities registration with the SEC in November of 2009 due to the wrongful actions of Defendants.

46. All of the Defendants were aware of Plaintiff's need and intentions to grow, develop and diversify beyond its ownership interests in and the revenue generated by Polar Molecular Corporation including those set forth above and the Defendants prevented the financing from taking place.
47. Subsequently, Defendants Socia and Hill became adversarial to Plaintiffs along with Plaintiffs' management and board directors starting in September of 2006, when Plaintiffs would not agree to allow Defendants Socia and Hill to utilize and sell Plaintiffs' patented products to third parties without Plaintiffs approval, oversight and involvement.
48. After the above-mentioned refusal, Defendants Socia and Hill contacted Plaintiffs prospective customers disclosed to them confidential information and convinced them not to do any business with Plaintiff resulting in millions of dollars in lost revenue. Not coincidentally, Defendants Socia and Hill are now soliciting those same customers for Petroleum Enhancer, LLC.
49. That Defendant Nelson approved of Defendants Socia and Hill's improper conduct and in fact admitted to Plaintiffs' President that he had been offered

a financial cut in the above-mentioned business dealings which Defendants Socia and Hill had sought to obtain.

50. In furtherance of the stock offering which had been previously approved in August of 2006, IBK Capital Corporation signed an engagement agreement to conduct a financing for Plaintiffs on December 6, 2006, and indicated that its investors would be purchasing the \$10 million dollars of preferred stock and that the transaction would be concluded by April of 2007.
51. Plaintiffs informed Defendant Becker along with the other Defendants (with the exception to Defendant Socia) in December of 2006, that the purchase of the stock would be concluded by April and that the debt owed to Affiliated Investments would be paid off forthwith.
52. Plaintiffs did not inform Defendant Socia because of the event which took place in September of 2006, as set forth above.
53. Defendant Socia became aware of IBK's offer when Defendant MacKenzie provided Defendant Socia with a copy of the contract between IBK and Plaintiffs.
54. Despite the fact that Defendant Socia had previously approved the sale of stock in August of 2006, Defendants Socia & Hill, upon being informed of the imminent sale of the \$10 million worth of preferred stock, encouraged and assisted in initiating a baseless lawsuit against Plaintiffs and sought (with the assistance of Defendant MacKenzie) to coerce Plaintiffs to fire

members of management who had refused to authorized the business dealings in September of 2006.

55. Defendant Socia & Hill informed IBK of the litigation along with the turmoil that they were creating within Plaintiffs' management, and that Defendants Socia, Hill & McKenzie were opposed to the financing.
56. Aware of the fact that Defendant Socia's activities were having a destabilizing effect upon Plaintiff and its management, IBK withdrew from the financial arrangement on January 19, 2007.
57. All of the Defendants know that the loss of the \$10 million dollar finance deal resulted in a financial crisis for Plaintiffs and has had a crippling effect on Plaintiffs financially as illustrated in the preceding paragraphs to this Complaint.
58. Having quashed the deal between IBK and Plaintiffs, Defendant Socia indicated on that he no longer supported the sale of the \$10 million dollar worth of preferred stock by an e-mail January 31, 2007, and in a letter dated March 5, 2007.
59. On March 29, 2007, Defendant Socia formed Petroleum Enhancer LLC for the sole purpose of purchasing the debt owed to Affiliate Investment, LLC.
60. On April 10, 2007, in an e-mail to Defendant Becker, Plaintiffs President Mark Nelson advised that Defendants Socia, MacKenzie and Hill had torpedoed the \$10,000,000.00 financing with IBK.

61. On April 18, 2007, Defendant Socia resigned from Plaintiffs' Board of Directors stating that "Polar was going nowhere".
62. On May 8, 2007, Defendant Becker indicated that he had sold Affiliated Investments interest in the loan to Petroleum Enhancer, LLC and that his lawyers would be working with Petroleum Enhancer, LLC to secure the documents and patent assignments (i.e. the collateral on the loan) from the escrow agent Lester Woodward.
63. In fact, Defendant Becker (and Affiliated Investment) sold his collateral interest in the patents and documents (with a value of over \$400,000,000.00) to Defendant Petroleum Enhancer, LLC for only \$2 million dollars (substantially more then what Defendant Becker would receive if Plaintiffs had paid him back).
64. Again, the value of the patents along with Plaintiff's intentions with regards to the \$10,000,000.00 financing were known to Defendants, and are not known to the public.
65. Furthermore, Defendant Becker became an owner of Defendant Petroleum Enhancer, LLC as part of his deal with Defendant Petroleum Enhancer, LLC (i.e. Defendants Socia & Hill).
66. Furthermore, the remaining Defendants have also joined with Defendant Petroleum Enhancer as set forth above, and Defendant Petroleum Enhancer is nothing more than the alter ego for the individual named Defendants.

67. Following the departure of Defendant MacKenzie, Plaintiffs Board of Directors have officially disavowed and repudiated any debt owed to Defendant Affiliated Investments due to the illegal acts of the Defendants including Affiliated Investments including the undermining of Plaintiffs efforts to repay debt obligations as well as Defendants efforts to improperly obtain Plaintiffs' intellectual property.

68. That Polar Molecular Corporation, the wholly owned subsidiary of Plaintiff, has no entitlement to the claims and damages sought by the allegations in Plaintiff's complaint.

COUNT I - BREACH OF FIDUCIARY DUTY

69. The Plaintiffs hereby incorporate paragraphs 1 through 68 of their common allegations word for word and paragraph by paragraph as if restated herein.

70. That Defendants' roles with Plaintiffs required them to act with the utmost good faith and loyalty to Plaintiffs.

71. That Defendants breached their fiduciary duty to Plaintiff in part, when they undermined Plaintiffs' finance deal with IBK (and thus preventing Plaintiffs from paying off the debt to Defendant Affiliated Investments) along with Plaintiff's other confidential plans of growth, development and diversification and in arranging the formation of Defendant Petroleum Enhancer, LLC for the purpose of acquiring patents for which Plaintiff could not bid upon because of Defendants' wrongful actions.

72. That Defendant Becker breached his duty and/or conspired with the co-Defendants in the breach of their fiduciary duties so that he could obtain a windfall of \$1,400,000.00 plus future financial benefits through his ownership interest in Defendant Petroleum Enhancer, LLC.
73. Specifically, Defendants, upon learning confidential information, have formed and utilized their corporate entity, Petroleum Enhancer, LLC have initiated a lawsuit in the United States District Court for the Eastern District of Michigan, Northern Division, Case Number 07-12425-BC, for the purpose of wrongfully obtaining valuable properties (i.e. the patents)
74. That Defendants are engaging in self dealing.
75. That none of the above mentioned activities by Defendants would have been possible but for Defendants unlawful utilization of insider information.
76. The purpose of Defendants' actions was to prevent Plaintiff from being able to payoff the debt it owed to Affiliated Investment, LLC and also for the purpose of depriving Plaintiff of the financial ability of seeking to purchase the collateral at a public or private sale along with an intention to prevent Plaintiff from growing, diversifying and developing so as to compete with Petroleum Enhancer.
77. That Plaintiffs have suffered significant financial loss as a result of Defendants' unlawful and fraudulent actions.

78. That as set forth above, Plaintiffs, have been damaged in excess of \$1 million dollars and the damages are continuing to accrue.
79. That Plaintiffs will continue to suffer financial losses as a result of Defendants' breach of their fiduciary duty.
80. That in addition to the above mentioned damages; Plaintiff has also suffered attorney's fees and other costs in pursuing this cause of action, which are incidental to the breach.
81. Specifically, Defendants seek and have obtained patents which have a value of over \$400 million dollars when Plaintiff could have outbid the Defendants but for Defendants' wrongful action when breaching their fiduciary duties to Plaintiff.
82. That the damages suffered exceed ONE MILLION DOLLARS (\$1,000,000.00).

COUNT II - TORTIOUS INTERFERENCE

83. The Plaintiffs hereby incorporate paragraphs 1 through 68 of their common allegations and paragraphs 68 through 82 of Count I word for word and paragraph by paragraph as if restated herein.
84. As explained more fully above, the Defendants intentionally interfered with a business transaction between Plaintiffs and IBK along with Plaintiffs' business transactions with potential customers.
85. As explained more fully above, Defendants acted illegally, fraudulently, and in a willfully unfair and oppressive manner to purposely interfere with

Plaintiffs' contractual and business expectancies with IBK as well as with its potential customers including, but not limited to, Total.

86. That Defendants did intentionally interfere with Plaintiffs' business relationship with IBK and its potential customers for their own personal gain at the expense of the Plaintiffs both during and after they ceased their association with Plaintiff.
87. That Defendants' actions herein did intentionally interfere with Plaintiff's business relationship and future business expectancy with IBK and Plaintiff's potential customers, which had a likelihood of future economic benefit to the Plaintiffs and to which Defendants were acutely aware.
88. That Defendants' actions have also resulted in interference between Plaintiff and its wholly owned subsidiary Polar Molecular Corporation.
89. That Defendants acted in bad faith and in a willfully unfair and oppressive manner to the Plaintiffs for their own personal gain and to the detriment of the Plaintiffs.
90. The purpose of Defendants' actions have been to hamper Plaintiffs' financial status so that the Plaintiffs would not be able to repay the amount owed to Affiliated Investments so that Defendants could snatch Plaintiff's intellectual property at a fraction of its immense value and also so that they can acquire Plaintiffs potential customers once they obtain the intellectual properties along with preventing Plaintiff from growing, developing and

diversifying its business so as to become a formable corporation in the petroleum additive business along with other businesses.

91. That Defendants interference with Plaintiff's business relationship and expectancies herein described were fraudulent, not lawful, not ethical, nor justified under any circumstances.
92. That, in the alternative, if it is found that Defendants conduct was lawful, it was still improper since it was done without justification and was willfully unfair and oppressive to the Plaintiffs.
93. That Defendants' actions do constitute tortious interference with a business contract, business relationship or expectancy of the Plaintiffs.
94. That the damages suffered exceed ONE MILLION DOLLARS (\$1,000,000.00).

COUNT III - CIVIL CONSPIRACY

95. The Plaintiffs hereby incorporate paragraphs 1 through 68 of their common allegations and paragraphs 69 through 82 of Count I, and paragraphs 83 through 94 of Count II word for word and paragraph by paragraph as if restated herein.
96. That Defendants actions herein, and all of them, do form the basis of a civil conspiracy against the Plaintiffs.

WHEREFORE, the Plaintiffs pray that this Honorable Court enter judgment in its favor, in an amount in excess of the sum of ONE MILLION (\$1,000,000.00) DOLLARS to compensate Plaintiff for all economic losses and all

attorney fees allowable under Statute. The Plaintiff further seeks all other legal, equitable and injunctive relief authorized by law and further seeks the return of the collateral.

Respectfully Submitted,

THE MASTROMARCO FIRM

Date: January 15, 2010

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DEMAND FOR TRIAL BY JURY

NOW COMES Plaintiffs by and through its attorneys, THE MASTROMARCO FIRM, and hereby demands trial by jury of all issues in this cause unless expressly waived.

Respectfully Submitted,

THE MASTROMARCO FIRM

Date: January 15, 2010

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PROOF OF SERVICE

I hereby certify that on **January 15, 2010**, I presented the foregoing paper to the Clerk of the Court for filing and uploading to the ECF system which will send notification of such filing to the following: **John Alfs and Guy Greve**, and I hereby certify that I have mailed by United States Postal Service the document to the following non ECF participants: **N/A**.

Date: January 15, 2010

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