Rec# 1371
No Sum Lo
1523

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CALDON, INC.,

Plaintiff,

v.

ADVANCED MEASUREMENT & ANALYSIS GROUP, INC. and WESTINGHOUSE ELECTRIC COMPANY LLC

Defendants.

04-1951

JURY TRIAL DEMANDED

I

COMPLAINT

THE PARTIES

1. Plaintiff, Caldon, Inc. (hereinafter "Caldon") is a Pennsylvania corporation with a principal place of business located at 1070 Banksville Avenue, Pittsburgh, PA 15216-3054.

2. Defendant, Advanced Measurement & Analysis Group, Inc. (hereinafter "AMAG") is a Canadian corporation with its principal place of business located at 2396 Dunwin Drive, Mississauga, Canada.

3. Defendant, Westinghouse Electric Company LLC, (hereinafter "Westinghouse") is a limited liability company with its principal place of business located at Monroeville, Pennsylvania. Since 1999, Westinghouse has been wholly owned by BNFL, LLC, a British Nuclear Fuels Company ("BNFL"). On May 20, 2000, BNFL acquired the commercial nuclear power business of ABB Combustion Engineering Nuclear Power, Inc. (hereinafter "ABB"), and integrated it into Westinghouse which became successor in interest to ABB with regard to the claims set forth herein.

A-62

Allegation No. NRR-2003-A-0003
Concern Number: 1
Action Number: 55

4. At all times material hereto Caldon has been engaged in the invention, design, manufacture and sale of ultrasonic measuring devices for the nuclear power industry and the petroleum industry, among others.

5. Since its inception, one of Caldon's principal product lines has been a line of ultrasonic flow meter systems for use in nuclear power plants, which provide information used to measure the flow of feedwater and ultimately the level of power generated by a power plant (hereinafter collectively referred to as the "Caldon UFM").

6. Defendant AMAG manufactures a competing ultrasonic flow meter for sale to the nuclear power industry ("the AMAG CROSSFLOW UFM").

7. Defendant Westinghouse markets the AMAG CROSSFLOW UFM under an exclusive arrangement with AMAG. Westinghouse's acts, representations, omissions and conduct which are hereinafter described were undertaken on behalf of itself and as a duly authorized agent of AMAG acting within the course and scope of its authority.

JURISDICTION

8. This court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b). This action is brought pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a), and a violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

VENUE

9. The venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c).

STATEMENT OF FACTS

THE INITIAL SUCCESS OF THE CALDON UFM

10. Prior to the entry into the market of the Caldon UFM, the devices in general use in the nuclear power industry to measure and determine a nuclear power plant's power output produced a calculated power rate which was generally considered to be accurate to within an average 2% margin of error.

11. In order to account for the 2% margin of error, nuclear power plant operators have been required by the terms of the operating licenses issued to them by the Nuclear Regulatory Commission ("NRC") for nuclear power plants located in the United States, and by other nuclear regulatory agencies for nuclear power plants located in other countries, to operate their nuclear power plants so as never to exceed a power level 2% lower than the maximum analyzed design limit. (This 2% lower level is referred to as the "Licensed Power Limit," the higher maximum analyzed design limit is referred to as the "Analyzed Limit").

12. The line of ultrasonic flow meters developed by Caldon, were far more accurate than the instruments previously in general use in the nuclear power industry.

13. Caldon's first UFM for use in nuclear power plants was its LEFM 8300, which was mounted on the external surface of a feedwater pipe and is referred to as an external UFM, is accurate to a margin of error of $\pm$ 1.0%.

14. Caldon determined that the accuracy of its UFM could be substantially improved if it utilized a flow element that would be calibrated in a flow testing facility and welded into the feedwater pipe, thereby removing uncertainties caused by the pipe thickness and other factors. It therefore developed and began selling the internally mounted LEFM Check UFM, which is accurate to a margin of error of $\pm$ 0.5%.

15. Subsequently Caldon developed an enhanced version of its internally mounted UFM called the LEFM Check Plus, which is accurate to a margin of error of $\pm$ 0.3%.

16. Because of the need to increase electric power generating capacity in the United States, the NRC has been receptive to requests from operators of nuclear power generating stations to "uprate" their power plants by increasing the Licensed Power Limit for their power plants.

17. One category of uprates promoted by Caldon and approved by the NRC is referred to in NRC documents as: "measurement uncertainty recapture (MUR) power uprates" which are achieved by the implementation of improved techniques for measuring reactor power output to a higher degree of accuracy than previously possible.

18. As a result of the greater accuracy of the Caldon internally mounted UFMs, nuclear power plant operators which purchased a Caldon Check or Check Plus UFM have been successful in obtaining MUR power uprates from the NRC. The resulting uprates have allowed nuclear power plant operators to increase their Licensed Power Limit by up to 1.7%, and therefore, operate within 0.3% of the Analyzed Limit, resulting in an increased power generation of 1.7%.

19. Each 0.1% increase in a power station's Licensed Power Limit has the effect of increasing the revenues from sales of electric power from that power station by approximately $200,000 per year for every 1,000 megawatts of power output.

20. Because of the beneficial economics of installing the Caldon UFM, Caldon achieved substantial sales of its flow meters to approximately 40 operators of nuclear power generating stations, and annual sales reached almost $12,000,000 by the end of 2000.

21. Field experience with the Caldon UFMs has demonstrated that Caldon's accuracy claims are true.

AMAG/Westinghouse's Competitive Response

22. There are approximately 450 operating nuclear power generating plants in the world.

23. Each sale of a Caldon UFM to one of these limited number of potential customers permanently eliminated a potential customer for the competing AMAG CROSSFLOW UFM.

24. In order to prevent Caldon from capturing a significant portion of the market ABB embarked upon a campaign to nip in the bud the competitive threat posed by Caldon.

25. This campaign to harm Caldon's ability to compete consisted of a campaign to sell its AMAG CROSSFLOW UFM by (a) exaggerating its accuracy and (b) by disparaging Caldon and the Caldon UFM.

26. As hereinafter more fully set forth, AMAG and Westinghouse conducted a campaign of unfair competition and disparagement with the intent to destroy the most promising portion of Caldon's business and business prospects by making exaggerated and inflated claims concerning the accuracy of the AMAG CROSSFLOW UFM and by disparaging the accuracy of the Caldon UFM.

False Claims of Accuracy

27. AMAG developed an externally mounted ultrasonic flow meter, which is mounted on the outside surface of a feedwater pipe, and which is called the AMAG CROSSFLOW UFM after the cross correlation technology upon which it is based.

28. AMAG and ABB represented to operators of nuclear electric power generating plants that the AMAG CROSSFLOW UFM was accurate to within a 0.5% margin of error.

which placed it in direct competition with Caldon's LEFM CHECK and LEFM CHECK PLUS UFMs.

29. After Westinghouse acquired ABB on May 2, 2000 it continued marketing the AMAG CROSSFLOW UFM and continued to represent to customers and potential customers that it was accurate to within a 0.5% margin of error and that installation of an AMAG CROSSFLOW UFM would allow the plant to obtain a power uprate from the NRC of approximately 1.5%.

30. For many years Westinghouse was and continues to be the dominant supplier to the worldwide nuclear power generating industry of nuclear plant products and services including fuel, service and maintenance, instrumentation and control and nuclear plant design. Westinghouse has the world's largest installed base of operating nuclear power plants.

31. Because of its long-standing dominance of the worldwide nuclear power products and services market Westinghouse's claims concerning the accuracy of the AMAG CROSSFLOW UFM found ready acceptance in the nuclear electric power generating industry.

32. Because of Westinghouse's dominant position in the industry and because the externally mounted AMAG CROSSFLOW UFM had certain cost and installation advantages over Caldon's LEFM CHECK and CHECK PLUS UFMs, Westinghouse quickly succeeded in capturing the nuclear power market for the AMAG CROSSFLOW UFM, which displaced the Caldon UFM as the preferred high accuracy UFM for use in that industry.

33. The key to Westinghouse's success in selling the AMAG CROSSFLOW UFM was the acceptance in the industry of Westinghouse's representation that the AMAG UFM was accurate to within a 0.5% margin of error.

34. However, AMAG and Westinghouse's representations regarding the accuracy of the AMAG CROSSFLOW UFM were false and misleading because the AMAG flow meter is based on technology which cannot achieve anything approximating the level of accuracy which AMAG and Westinghouse claimed it could achieve.

35. The feedwater being measured by a UFM typically does not flow at a uniform velocity across the pipe, but rather is affected by various flow disturbances which cause turbulence, swirls and eddies in the flowing feedwater and which cause the velocity of the fluid flowing axially down the pipe to vary spatially. The sum total of these variations in the velocity of the feedwater is called the "velocity profile" of the feedwater.

36. The variations in the velocity profile of the feedwater create a small level of uncertainty in the accuracy of the Caldon UFM, but that uncertainty is within the margin of error (0.5% for the LEFM Check and 0.3% for the LEFM Check Plus) represented by Caldon.

37. Velocity profile variation affects the accuracy of externally mounted UFMs such as the AMAG CROSSFLOW UFM to a much greater extent and can create an error in measurement which can be three to five times greater than the 0.5% margin of error claimed by AMAG and Westinghouse for the CROSSFLOW UFM.

38. Westinghouse has repeatedly represented to the nuclear power industry and potential purchasers of its products that measurements with the AMAG UFM were not materially affected by variations in feedwater velocity profile, and claimed to have secret proprietary information supporting its claim.

39. The claim that the AMAG CROSSFLOW UFM is not materially affected by uninterrupted changes in the velocity profile of the feedwater is false.

40. AMAG and Westinghouse either knew, or recklessly disregarded available information from which they should have known, that their representations to potential customers, that the accuracy of the AMAG CROSSFLOW UFM was not materially affected by variations in velocity profile, were false.

41. Because the false representations made by Westinghouse and AMAG were believed, Westinghouse began selling the AMAG CROSSFLOW UFM and among its early success were sales to Exelon Generating Company, LLC ("Exelon") for use at its Byron and Braidwood Nuclear Power Generating Stations.

42. It was not long before the false claims being made by Westinghouse concerning the accuracy of the AMAG CROSSFLOW UFM were called into question by field performance.

43. On September 29, 2003 Exelon reported that Units 1 and 2 of its Nuclear Power Generating Station located in Byron, IL ("Byron 1 and 2") had been operating in excess of its Licensed Power Limit because of inaccuracies in the measurement of feedwater flow using AMAG CROSSFLOW UFMs.

44. The report stated that Byron 1 and 2 had exceeded their Licensed Power Limit by 1.64% and 0.42% respectively.

45. On September 30, 2003, Excelon reported to the NRC that Unit 2 at its Braidwood Nuclear Power Generating Station located at Bradenville, IL ("Braidwood 2") had exceeded its Licensed Power Limit due to AMAG CROSSFLOW UFM's which failed to perform to the claimed level of accuracy.

46. On March 30, 2004 Exelon reported that Unit 1 at Braidwood was also operating in excess of its Licensed Power Limit due to inaccuracies in feedwater flow measurements made by an AMAG CROSSFLOW UFM.

47. The March 30, 2004 report covered both Units 1 and 2 at Braidwood and stated that they had exceeded their Licensed Power Limit by up to 1.07% and 1.21% respectively.

48. On March 31, 2004, Exelon submitted a supplemental report to the NRC regarding Byron 1 and 2, which revised the error percentage to 2.62% for Unit 1 and 1.88% for Unit 2.

49. As a result of the reports submitted by Exelon and others that the AMAG CROSSFLOW UFMs were not as accurate as represented by AMAG and Westinghouse, the NRC organized a group called the Ultrasonic Flow Meter Allegation Task Group ("Task Group") to investigate whether the AMAG CROSSFLOW UFM was providing the level of accuracy represented by AMAG and Westinghouse.

50. During the course of its investigation the Task Group reviewed the performance of the Caldon UFMs as well as the AMAG CROSSFLOW UFMs.

51. On June 7, 2004 the Task Group issued its report on the Caldon UFMs. The report concluded that the Caldon Check was accurate to a margin of error of 0.4 – 0.5% and the Caldon Check Plus to a margin of error of 0.25 – 0.30%. The Task Group concluded the report by stating:

> "The Caldon LEFM Check Plus appears to be an improvement over the LEFM Check and the Task Group is reasonably confident either UFM will provide the anticipated accuracy when properly operated and maintained by trained personnel."

52. On July 1, 2004, the Task Group issued its report concerning the AMAG UFMs. With respect to the claims of accuracy made by AMAG and Westinghouse, the Task Group stated:

> "The Task Group does not believe the claimed values are adequately substantiated for plant installations."

53. With respect to the question whether there were reasonable assurances that the AMAG UFM was operating as expected, the Task Group answered:

> "No. Some installations [of the AMAG UFM] have resulted in extended overpower operation and the reasons are not yet understood. The Task Group believes that crossflow use must be restricted to certain plant configurations and/or operating conditions, but the Task Group has not seen reasonable assurance this will be accomplished."

54. Specifically the Task Group report on the AMAG CROSSFLOW UFMs concluded:

> "Plant specific operating experience at Byron, Braidwood, and Fort Calhoun indicates that the Crossflow UFM has not provided the intended accuracy for feedwater flow measurement at these facilities. Further, accuracy questions have arisen in some other plant installations that use Crossflow UFMs and, in some cases, there are questions regarding the basic design of the UFMs.

55. Westinghouse promoted the AMAG CROSSFLOW UFM to the nuclear power industry by making the following claims and representations, which were false when made:

(a) That the AMAG CROSSFLOW UFM represented "proven technology."

(b) That the AMAG CROSSFLOW UFM has a "100% success rate."

(c) That the accuracy of the AMAG CROSSFLOW UFM on a single line is 0.4%.

(d) That the accuracy of the AMAG CROSSFLOW XT UFM is 0.3%.

(e) That the accuracy of the AMAG CROSSFLOW UFM was not materially affected by unexpected variations in the velocity profile of the feedwater.

56. Despite the fact that the above-mentioned problems with the accuracy of the AMAG flow meters were reported by the operators of at least five power plant operators, AMAG

and Westinghouse continue to misrepresent the capabilities of AMAG CROSSFLOW UFMs to customers.

DISPARAGEMENT OF CALDON UFM

57. The transit-time technology on which the Caldon UFM was based was developed by Westinghouse.

58. Caldon was formed in 1987 by a former Westinghouse executive who participated in the development of the transit-time technology.

59. In 1989 Caldon, purchased from Westinghouse all of Westinghouse's rights to the transit-time technology which Caldon intended to further develop and to manufacture and sell flow meters based on the technology to the nuclear power industry.

60. At the time Westinghouse sold the technology to Caldon, Westinghouse considered it as a viable, promising technology, with great potential, especially for use in the nuclear power industry.

61. After Westinghouse began promoting the sale of the AMAG CROSSFLOW UFM, it began a campaign of disparagement against Caldon and the transit-time technology which it had sold to Caldon.

62. This campaign of disparagement was carried out by publishing numerous false disparaging statements including, but not limited to, the following:

(a) That Westinghouse sold the transit-time technology to a small company, Caldon, because Westinghouse no longer considered the technology to have long-term viability.

(b) The Caldon LEFM Check and Check Plus UFMs were overly sensitive to perturbations in the velocity profile of feedwater.

(c) Radial and tangential components of the velocity profile of the feedwater being measured may cause material

inaccuracies in flow meters like the Caldon UFMs, which are based on transit-time technology.

(d) That inaccuracies in the Caldon UFM can be expected to cause overpower events.

63. The foregoing false and disparaging claims were made in regulatory submissions which were widely disseminated to customers and potential customers and in written communications distributed by Westinghouse to operators of nuclear power generating stations.

DAMAGE TO CALDON

64. As a direct and proximate result of the false and misleading representations made by AMAG and Westinghouse concerning the accuracy of the AMAG UFM, Caldon has lost, and continues to lose, substantial sales, revenues and income, has lost substantial goodwill in the market place, has been required to reduce research and development expenses, and has lost valuable employees, all of which have caused severe damage to Caldon's business and business prospects.

65. As a direct and proximate result of the above-mentioned disparaging statements published and distributed by AMAG and Westinghouse, Caldon has lost, and continues to lose, substantial sales, revenues and income, has lost substantial goodwill in the market place, has been required to reduce research and development expenses, and has lost valuable employees, all of which have caused severe damage to Caldon's business and business prospects.

First Claim for Relief

Violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a)

Caldon, Inc. v. Advanced Measurement and Analysis Group, Inc. and Westinghouse Electric Company, LLC

Unfair Competition

66. Plaintiff hereby incorporates by reference the averments in paragraphs 1 through 65 of this Complaint as if set forth fully herein.

67. AMAG and Westinghouse have caused their activities, products and services as hereinabove described to enter into commerce and interstate commerce.

68. AMAG and Westinghouse's conduct and misrepresentations concerning the accuracy of the AMAG UFM constitute false description and false representation of the nature, characteristics and quality of their product, within the meaning of Section 43(a)(2) of the Lanham Act, 15 U.S.C. § 1125(a)(2).

69. When AMAG and Westinghouse made such false representations, they knew or should have known that such representations were false and would tend to mislead and deceive nuclear power plant operators to which they were marketing the product within the nuclear power generating industry.

70. Upon information and belief, AMAG and Westinghouse have been transacting and continue to transact business in this jurisdiction and elsewhere in interstate commerce, and have been and continue to infringe the rights of Caldon in this jurisdiction and elsewhere in interstate commerce, and regularly have been and now do business and solicit business and derive substantial revenue from goods sold, used and consumed in this jurisdiction and elsewhere in interstate commerce.

71. By reason of the foregoing, Caldon has been damaged in an amount to be determined at trial, with such damages trebled as provided by statute.

WHEREFORE, the Plaintiff demands judgment in its favor and against both Defendants, jointly and severally, in an amount to be determined at trial trebled, plus costs of suit, attorneys' fees and interest.

Second Claim for Relief

Violation of Sherman Antitrust Act , 15 U.S.C. § 2

Caldon, Inc. v. Advanced Measurement and Analysis Group, Inc. and Westinghouse Electric Company, LLC

72. Plaintiff hereby incorporates by reference the averments in paragraphs 1 through 71 of this Complaint as if set forth fully herein.

73. Defendants AMAG and Westinghouse engaged in the above-described acts and conduct with the specific intent to destroy Caldon as their only competitor in the high accuracy UFM nuclear power generating market (the "Relevant Market") so that the Defendants could monopolize that market with the AMAG CROSSFLOW UFM.

74. As the dominant supplier of products and services to the nuclear power generating industry and as Caldon's sole competitor in the Relevant Market, Westinghouse, on behalf of itself and AMAG, possesses market power sufficient to create a dangerous probability of monopolization of the Relevant Market.

75. Defendants' above-described acts and predatory conduct when coupled with the specific intent to destroy competition in the Relevant Market from the Caldon UFM and the dangerous probability of monopolizing that market, constitutes an unlawful attempt to monopolize within the meaning of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2.

76. As a direct and proximate result of the Defendants above-described unlawful conduct, Caldon has been injured in its business and property within the meaning of Section 4 of the Clayton Act, 15 U.S.C. § 15(a) and is therefore entitled to recover threefold the damages which Caldon has and will sustain, plus costs, attorneys' fees and interest.

WHEREFORE, the Plaintiff demands judgment in its favor and against both Defendants, jointly and severally, in an amount to be determined at trial trebled, plus costs of suit, attorneys' fees and interest.

PICADIO SNEATH MILLER & NORTON, P.C.

By:_____

ANTHONY P. PICADIO, ESQUIRE
Pa. I.D. No. 01342
JAMES W. KRAUS, ESQUIRE
Pa. I.D. No. 56881
4710 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
(412) 288-4000
(412) 288-2405 (Fax)

JS 44
(Rev. 3/99)

CIVIL COVER SHEET

04-1951

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Caldon, Inc.

DEFENDANTS

Advanced Measurement & Analysis Group, Inc.

Westinghouse Electric Company LLC

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Allegheny
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Anthony P. Picadio, Esq. & James W. Kraus, Esq.
Picadio Sneath Miller & Norton, P.C.
Suite 4710, 600 Grant Street
Pittsburgh, PA 15219 412-288-4000

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- XX 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury — Med. Malpractice
- ☐ 365 Personal Injury — Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- HABEAS CORPUS:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS — Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- XX 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

XX 1 Original Proceeding | ☐ 2 Removed from State Court | ☐ 3 Remanded from Appellate Court | ☐ 4 Reinstated or Reopened | ☐ 5 Transferred from another district (specify) | ☐ 6 Multidistrict Litigation | ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Sherman Act, 15 U.S.C. § 2 - Attempted monopolization
Lanham Act, 15 U.S.C. § 1125 - Unfair competition

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND $ CHECK YES only if demanded in complaint: JURY DEMAND: XX YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/29/04

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44A REVISED OCTOBER, 1993

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A
This case belongs on the (_____ Erie _____ Johnstown __X__ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venango or Warren, **OR** any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset, **OR** any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR:** I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.
4. Complete if on **JOHNSTOWN CALENDAR:** I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check **ONE** of the following)
1. _____ This case is related to Number _____, Judge _____.
2. __X__ This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:
CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit, or involves the same issues of fact or it grows out of the same transactions as another suit, or involves the validity or infringement of a patent involved in another suit.
EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.
HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C
CIVIL CATEGORY (Place x in only applicable category).

1. (XX) Antitrust and Securities Act Cases
2. ( ) Labor-Management Relations
3. ( ) Habeas Corpus
4. ( ) Civil Rights
5. ( ) Patent, Copyright, and Trademark
6. ( ) Eminent Domain
7. ( ) All other federal question cases
8. ( ) All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest.
9. ( ) Insurance indemnity, contract, and other diversity cases.
10. ( ) Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.B.A. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct.

Date: 12/29/04

_____
ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.