

March 12, 2010

Day Pitney Team Wins Contract Dispute Over Sale of Sonar Equipment to NATO

Day Pitney has won a major victory in the United States District Court for the Southern District of New York for Italian-based client, Compagnia Importazioni Esportazioni Rappresentanze ("CIER").

The case involved a breach of contract dispute against Delaware-based L-3 Communications Corporation, Ocean Systems Division ("L-3OS"). L-3OS is the manufacturer of a dipping sonar system installed in helicopters, known as the Helicopter Long Range Active Sonar System (HELTRAS).

The Day Pitney team was led by New Jersey Litigation partner, Anthony J. Marchetta. Mr. Marchetta was assisted by New Jersey associates Mark S. Morgan and Kristine Russo Begley.

L-3OS hired CIER to provide consulting services, technical advising, and sales assistance for HELTRAS within Italy and the broader European military defense market. CIER was instrumental in L-3OS winning a contract award to provide HELTRAS to the European four nation NH-90 Helicopter Program. The contract award's initial order, valued at over \$32 million, provides 20 systems to support the deliveries of NH-90 Helicopters to the Italian and Dutch navies. The contract award provides for an additional 40 systems to follow, bringing the total contract value to more than \$65 million.

CIER and L-3OS are parties to an International Representative Agreement. CIER sued L-3OS over unpaid commissions related to the NH-90 contract award. The issue in dispute was whether L-3OS could extinguish CIER's right to collect commissions for procuring the NH-90 contract 19 months before the expiration of the parties' Representative Agreement even though the actual delivery of the products occurred after expiration.

The court agreed with CIER and declared that the International Representative Agreement did not contain any temporal limitation on CIER's right to collect commissions on deliveries made after the expiration of the Representative Agreement. In a 38-page opinion, Judge Naomi Reice Buchwald wrote: "The fact that the commissions are not payable until L-3OS receives payment from [the customer] does not change the result as to when commissions are earned by CIER, although it does condition the payment to CIER of any commissions earned on the receipt of payment by L-3OS from [the customer]."

The court granted CIER summary judgment and concluded: "L-3OS is obligated to pay CIER a commission equal to five percent of the Net Sales Price of all sonar equipment or component parts delivered pursuant to the Sub-Supply Contract, including any and all deliveries as contemplated in Article 4.1, upon L-3OS's receipt of payment for such delivery. To the extent that such payments have been or will be received by L-3OS, L-3OS must notify CIER in a manner that allows CIER to submit an invoice for its commissions. To the extent that L-3OS has not complied with its obligations under the 2002 Representative Agreement...it is in breach of that agreement."

About Day Pitney

Day Pitney LLP is a full-service law firm with approximately 375 attorneys operating in offices in New York; New Jersey; Connecticut; Boston; and Washington, DC. The firm offers clients strong corporate and litigation practices, with experience on behalf of large national and international corporations as well as emerging and middle-market companies and individuals.

Key Contacts



Anthony J. Marchetta
Of Counsel

Parsippany, NJ | (973) 966-8032

New York, NY | (212) 297-5827

amarchetta@daypitney.com



Mark Salah Morgan
Partner

Parsippany, NJ | (973) 966-8067

New York, NY | (212) 297-2421

mmorgan@daypitney.com