

CAUSE NO. 2020-63081

FMC TECHNOLOGIES, INC.,

Plaintiff,

v.

RICHARD MURPHY, and
DRIL-QUIP, INC.

Defendants.

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IN THE 127th DISTRICT COURT

OF HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT COURT

FILED

Marilyn Burgess
District Clerk

APR 29 2021

Time: 2:00 PM

By D. Patel
Deputy

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

We all have feelings, assumptions, perceptions, fears and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is they are called “implicit” or “unconscious biases.” No matter how unbiased we think we are, our brains are hardwired to make unconscious decisions. We look at others and filter what they say through the lens of our own personal experience and background. Because we all do this, we often see life—and evaluate evidence—in a way that tends to favor people who are like ourselves or who have had life experiences like our own. We can also have biases about people like ourselves. One common example is the automatic association of male with career and female with family. Bias can affect our thoughts, how we remember what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make important decisions in this case. You must:

- a. Take the time you need to reflect carefully and thoughtfully about the evidence;
- b. Think about why you are making the decision you are making and examine it for bias. Reconsider your first impressions of the people and the evidence in this case. If the people involved in this case were from different backgrounds, for example, richer or poorer, more or less educated, older or younger, of of a different gender, gender identity, race religion or sexual orientation would you still view them and the evidence the same way;
- c. Listen to one another. You must carefully evaluate the evidence, resist and help each other resist any urge to reach a verdict influenced by bias for or against any party or witness. Each of you have different backgrounds and will be viewing the case in the light of your own insights, assumptions and biases. Listening to different perspectives may help you to better identify the possible effects these hidden biases may have on decision-making.

- d. Resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes or unconscious biases.

The law demands that you make a fair decision, based solely on the evidence, your individual evaluations of that evidence, your reason, common sense and these instructions.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

DEFINITIONS

"FMC" means FMC Technologies, Inc. and its employees acting in the furtherance of FMC's business.

"Dril-Quip" means Dril-Quip, Inc. and its employees acting in the furtherance of Dril-Quip's business.

"Murphy" means Richard Murphy.

"TTW System" means FMC's orientation-free, In-the-Wellhead (ITW) subsea tree-and-hanger system.

"VXTe" means Dril-Quip's orientation-free, subsea tree-and-hanger system.

INSTRUCTIONS

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

The rules of evidence provide that where testimony and opinions on certain issues might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify and state his or her opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based on sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

Deposition testimony consists of the sworn testimony of witnesses taken by a court reporter in the presence of attorneys for the parties. Deposition testimony read into evidence during the trial or presented by videotape is to be considered by you in the same manner as though the witness had personally appeared before you and testified from the witness stand.

A corporation can act only through its directors, officers, agents, or employees. Any action by the directors, officers, agents, or employees of the corporation is the act of that corporation if the act was within the scope of that person's authority or employment.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

Question No. 1

Did FMC own a trade secret in the business, technical, economic, financial, or engineering information listed below?

“Trade secret” means all forms and types of information, including business, scientific, technical, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, device, method, technique, process, procedure, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing that:

- (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable, by proper means by other persons who can obtain economic value from its disclosure or use; and
- (2) is the subject of reasonable measures by the owner under the circumstances to maintain its secrecy.

“Proper means” are discovery by independent development, reverse engineering, public disclosure, or the voluntary disclosure of the information to others who are under no obligation to protect the confidentiality of the information.

Trade-secret status is not destroyed by limited communications of the information in further of the owner’s economic interests. For example, a trade-secret owner may communicate his or her trade secret to employees, joint venturers, or agents who are involved in its use without losing the legal protection for the secret. A trade-secret owner may also disclose his or her secret to do business with others in potential transactions involving the trade secret without losing the legal protection for the secret. Confidential disclosures to employees, licensees, or others will not destroy the information’s status as a trade secret, and even limited, non-confidential disclosure will not necessarily terminate protection if the recipients of the disclosure maintain the secrecy of the information.

“Improper means” include the theft, misrepresentation, breach of a duty to maintain secrecy or inducement of a breach to maintain secrecy, to limit use, or to prohibit discovery of a trade secret.

A trade secret can exist in a combination of characteristics and components each of which, by itself, is in the public domain, but the unified process, design and operation of which in unique combination, affords a competitive advantage and is a protectible secret. The combination itself must add value to the product, beyond simply the sum of its components.

“Independent development” means that defendant derived the trade secret information before the alleged act of misappropriation, or the defendant derived the trade secret information independent of the alleged act of misappropriation. Independent development includes the conception of the trade secret information before the alleged act of misappropriation, even if implementation does not occur until after the alleged act of misappropriation.

“Voluntary disclosure” includes, but is not limited to, publication, disclosure of the information at issue to others who are under no obligation to protect the confidentiality of the information, or any other action that destroys the information’s prior secrecy. Once information is voluntarily disclosed to others who are under no obligation to protect the confidentiality of the information or is otherwise publicly disclosed, the proprietary rights to the information are extinguished.

“Reverse engineering” means the process of studying, analyzing, or disassembling a product or device to discover its design, structure, construction, or source code provided that the product or device was acquired lawfully or from a person having the legal right to convey it.

“Own” means to have rightful, legal, or equitable title to, or the right to enforce rights in, a trade secret. For an employer to own a trade secret developed by an employee, the employee must have been hired to invent or devise the trade secret. If the employee was not hired to invent or devise the trade secret, the employee is entitled to ownership of the trade secret.

“Readily ascertainable” information may not be protected as a trade secret. Information is readily ascertainable if the information is available in published articles, published patents or patent applications, Internet web pages, reference books, or other published materials, or through reverse engineering of a publicly marketed product. Information is also readily ascertainable if the information is obvious or readily apparent from any of the same sources, or is generally known or publicly available.

To qualify as a trade secret, the information must in fact be secret. A substantial element of secrecy must exist with respect to the information at issue, so that, except by the use of improper means, it would be difficult or costly to acquire the information. Thus, information that is readily ascertainable, because it is easily available in trade journals, reference books, or other published materials, or from a brief and inexpensive examination of a publicly marketed product, cannot be a trade secret.

Answer "Yes" or "No" as to each:

- A. FMC's design drawings and technical information related to the combination of the following features for its ITW subsea tree-and-hanger system: (a) an orientation-free mechanism, (b) a flat-to-flat lock ring, (c) an annulus fluid path through the production stab, and (d) an automatic space out mechanism?

Answer: NO

- B. FMC-created internal technical and business files retained by Murphy after his employment with FMC other than those relating to FMC's design of its ITW System.

Answer: NO

If you answered “Yes” to any part of Question 1, then answer the following question as to that part. Otherwise, do not answer the following question.

Question No. 2

Did any of the following misappropriate FMC’s trade secrets?

To find misappropriation of a trade secret, you must find that Mr. Murphy or Dril-Quip—

1. acquired the trade secret through improper means and knew or had reason to know that the trade secret was acquired by improper means; or
2. disclosed or used the trade secret without FMC’s express or implied consent, and used improper means to acquire the trade secret; or
3. disclosed or used the trade secret without FMC’s express or implied consent, and, at the time of the disclosure or use, knew or had reason to know that their knowledge of the trade secret was derived from or through a person who had used improper means to acquire it; or
4. disclosed or used the trade secret without FMC’s express or implied consent, and, at the time of the disclosure or use, knew or had reason to know that their knowledge of the trade secret was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
5. disclosed or used the trade secret without FMC’s express or implied consent, and, at the time of the disclosure or use, knew or had reason to know that their knowledge of the trade secret was derived from or through a person who owed a duty to FMC to maintain its secrecy or limit its use; or
6. as to Mr. Murphy, breached the confidence reposed in him by FMC by disclosing or using the trade secret.

“Improper means” include the theft, misrepresentation, breach of a duty to maintain secrecy or inducement of a breach to maintain secrecy, to limit use, or to prohibit discovery of a trade secret.

“Proper means” are discovery by independent development or any other means that is not improper prior to or contemporaneous with the alleged misappropriation.

“Use” of the trade secret means commercial use by which the offending party seeks to profit from the use of the secret.

An employee may use general knowledge, skills, and experience obtained through previous employment to compete with the former employer. A former employee, however, may not use confidential or proprietary information acquired during the employment relationship in a manner adverse to his former employer.

Answer “Yes” or “No” as to each:

- A. FMC’s design drawings and technical information related to the combination of the following features for its ITW subsea tree-and-hanger system: (a) an orientation-free mechanism, (b) a flat-to-flat lock ring, (c) an annulus fluid path through the production stab, and (d) an automatic space out mechanism?

Answer:

Mr. Murphy : _____

Dril-Quip : _____

- B. FMC-created internal technical and business files retained by Murphy after his employment with FMC other than those relating to FMC’s design of its ITW System.

Answer:

Mr. Murphy : _____

Dril-Quip : _____

CERTIFICATE OF UNANIMITY

Please indicate below, by the signature of the presiding juror, if the jury was unanimous in its answers to the following question:

2A

As to Mr. Murphy: _____
Presiding Juror

As to Dril-Quip: _____
Presiding Juror

If you answered "Yes" to any part of Question 2A, then answer the following question. Otherwise, do not answer the following question.

Question No. 3

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate FMC for its damages, if any, that were caused by such misappropriation?

Consider the following elements of damages, if any, and none other. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

- A. The value that a reasonably prudent investor would have paid for FMC's design drawings and technical information related to the combination of the following features for its ITW subsea tree-and-hanger system: (a) an orientation-free mechanism, (b) a flat-to-flat lock ring, (c) an annulus fluid path through the production stab, and (d) an automatic space out mechanism at the time of the misappropriation.

Answer: \$ _____

- B. Profits that Dril-Quip earned from the misappropriation of FMC's design drawings and technical information related to the combination of the following features for its ITW subsea tree-and-hanger system: (a) an orientation-free mechanism, (b) a flat-to-flat lock ring, (c) an annulus fluid path through the production stab, and (d) an automatic space out mechanism?

Answer: \$ _____

C. Development costs that Dril-Quip saved by the misappropriation of FMC's design drawings and technical information related to the combination of the following features for its ITW subsea tree-and-hanger system: (a) an orientation-free mechanism, (b) a flat-to-flat lock ring, (c) an annulus fluid path through the production stab, and (d) an automatic space out mechanism?

Answer: \$ _____

If you answered "Yes" to any part of Question 2A, then answer the corresponding parts of the following question. Otherwise, do not answer the following question.

Question No. 4

Did Richard Murphy or Dril-Quip use any of the following in designing or developing Dril-Quip's VXTe?

Answer "Yes" or "No."

- A. FMC's design drawings and technical information related to the combination of the following features for its ITW subsea tree-and-hanger system: (a) an orientation-free mechanism, (b) a flat-to-flat lock ring, (c) an annulus fluid path through the production stab, and (d) an automatic space out mechanism?

Answer: _____

If you unanimously answered "Yes" to Question 2A as to Richard Murphy, then answer the of the question below with respect to each party. Otherwise, do not answer the following question.

To answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

Question No. 5

Do you find by clear-and-convincing evidence that the misappropriation you have found by Richard Murphy was willful and malicious?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Willful and malicious misappropriation" means intentional misappropriation resulting from the conscious disregard of the rights of the owner of the trade secret.

Answer "Yes" or "No."

Answer: _____

CERTIFICATE OF UNANIMITY

Please indicate below, by the signature of the presiding juror, if the jury was unanimous in its answer to this question:

Presiding Juror

If you unanimously answered “Yes” to Question 2A as to Richard Murphy, then answer the of the question below with respect to each party. Otherwise, do not answer the following question.

To answer “Yes” to any part of the following question, your answer must be unanimous. You may answer “No” to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

Question No. 6

Do you find by clear-and-convincing evidence that a vice-principal or manager of Dril-Quip ratified or approved the conduct you found with regard to Mr. Murphy in Question 5?

A person is a “vice-principal” if—

1. That person is a corporate officer; or
2. That person has authority to employ, direct, and discharge an employee of Dril-Quip; or
3. Dril-Quip has confided to that person the management of the whole or a department or division of the business of Dril-Quip.

A person is a manager or is employed in a managerial capacity if—

1. That person has the authority to employ, direct, and discharge an employee of Dril-Quip; or
2. Dril-Quip has confided to that person the management of the whole or a department or division of the business of Dril-Quip.

Answer “Yes” or “No.”

Answer: _____

CERTIFICATE OF UNANIMITY

Please indicate below, by the signature of the presiding juror, if the jury was unanimous in its answer to this question:

Presiding Juror

If you unanimously answered Question No. 5 with respect to Richard Murphy or Question No. 6 with respect to Dril-Quip, then please answer the following question.

Question No. 7.

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

What sum of money, if any, should be assessed against either of the following and awarded to FMC as exemplary damages for the conduct found in response to Question 5 or Question 6, respectively?

“Exemplary damages” means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages include punitive damages.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of the wrongdoer.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of the defendant.

Answer in dollars and cents, if any, for each of the following.

Richard Murphy: \$ _____

Dril-Quip: \$ _____

CERTIFICATE OF UNANIMITY

Please indicate below, by the signature of the presiding juror, if the jury was unanimous in its answer to this question:

As to Mr. Murphy: _____

As to Dril-Quip: _____

INSTRUCTIONS upon RETIRING to the jury room

When you go into the jury room to answer the questions, the first thing you will need to do is choose a foreperson. The foreperson has these duties:

- a. have the complete charge read aloud;
- b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
- c. give written questions or comments to the bailiff who will give them to the judge;
- d. write down the answers you agree on;
- e. get the signatures for the verdict certificate; and
- f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the foreperson? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate

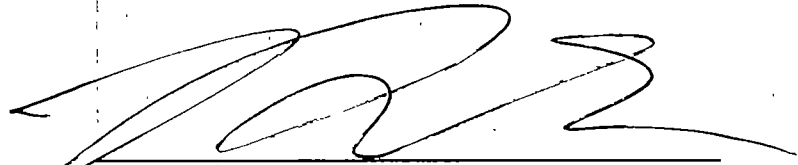
1. Unless otherwise instructed you may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict. If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten or eleven jurors who agree on every answer will sign the verdict.

4. There are some special instructions before Questions 5, 6 & 7 explaining how to answer those questions. Please follow the instructions. If all twelve of you answer any of those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.



Ravi Sandill, Judge Presiding

Verdict Certificate

Check one:

_____ Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below. Please also print your names below.

Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below. Please also print your names below.

Signature

Name Printed

- | | |
|------------------------------|---------------------------|
| 1. <u>Jonathan M. Wynson</u> | <u>Jonathan M. Wynson</u> |
| 2. <u>Isaac Kapeel</u> | <u>Isaac Kapeel</u> |
| 3. <u>Zachary Woodruff</u> | <u>Zachary Woodruff</u> |
| 4. <u>Fabian Orozco</u> | <u>Fabian Orozco</u> |
| 5. <u>Joseph Rozelle</u> | <u>Joseph Rozelle</u> |
| 6. <u>James Jamison</u> | <u>James Jamison</u> |
| 7. <u>Kathryn Ticha</u> | <u>Kathryn Ticha</u> |
| 8. <u>Paula Greenspan</u> | <u>Paula Greenspan</u> |
| 9. <u>Yulissa Guerrero</u> | <u>Yulissa Guerrero</u> |
| 10. <u>Margarita Flann</u> | <u>Margarita Flann</u> |
| 11. _____ | _____ |

Additional Certificate

I certify that the jury was unanimous in answering the following questions. All twelve of us agreed to each of the answers. The presiding juror has signed the certificate for all twelve of us.

Question 2A: _____

Question 5: _____

Question 6: _____

Question 7: _____

Signature of Presiding Juror

Printed Name of Presiding Juror