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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

$610

BC TECHNICAL, INC., a Utah corporation, Plaintiff, v. **JONES, WALDO, HOLBROOK & McDONOUGH, PC**, a Utah professional corporation; **VINCENT C. RAMPTON**; and **DOE INDIVIDUALS I-V**, Defendants.	**COMPLAINT** (Jury Demanded) Civil No. 110917258 Judge MAUGHAN

Plaintiff, BC Technical, Inc. ("BCT"), hereby complains against defendants, Jones, Waldo, Holbrook & McDonough ("Jones Waldo"), Vincent C. Rampton ("Rampton"), and Doe Individuals I-V (collectively "Doe Defendants") and, demanding trial by jury, seeks relief as follows:

NATURE OF CASE

1. This is a legal malpractice case. Through this Complaint, BCT seeks to recover the more than $10 million of damages caused by Jones Waldo's botched defense of BCT in a federal lawsuit. Jones Waldo's lawyering failures were both pervasive and egregious. They materially contributed to the court's striking BCT's pleadings, entering a default judgment on the issue of BCT's liability, and ordering it to pay several hundred thousand dollars of fees and costs. With its case gutted, BCT had no choice but to negotiate a settlement to contain its financial losses. Now that settlement has been reached, Jones Waldo must be held accountable for the massive damages it caused.

PARTIES

2. BCT is a Utah corporation that maintains its principal place of business in Salt Lake County, Utah. At all times relevant to this action, BCT operated as an independent provider of maintenance and repair services to owners of nuclear medical devices.

3. Jones Waldo is a law firm organized as a Utah professional corporation, with its principal place of business in Salt Lake County, Utah. At all times relevant to this action, Jones Waldo's lawyers engaged in the practice of law in the state of Utah and elsewhere.

4. Rampton is a resident of Salt Lake County, Utah who, since 1979, has been a licensed Utah lawyer. At all times relevant to this action, Rampton was a Jones Waldo shareholder and employee.

5. Doe Defendants are individual lawyers affiliated with Jones Waldo who may have participated in the conduct, occurrences and omissions alleged in this Complaint. BCT hereby reserves its right to name one or more such Doe Defendants as a named party defendant should discovery establish or suggest the need for such procedural action.

JURISDICTION AND VENUE

6. This court is vested with jurisdiction of this case pursuant to Utah Code Ann. § 78A-5-102(1).

7. Venue is proper in this court pursuant to Utah Code Ann. §§ 78B-3-304 and -307.

FACTS

A. Jones Waldo Touts Its Ability to Provide Exceptional Legal Expertise.

8. Jones Waldo promotes itself to the public as "one of Utah's most prestigious and pioneering law firms," as a firm committed to "finding innovative solutions" for its clients, and as a firm with the "expertise to solve complex client needs in nearly every area of business."

9. Jones Waldo touts its litigation department, of which Rampton is a member, as being experienced and skilled in a "broad spectrum of cases in state and federal courts," with "an emphasis on commercial and business-related litigation."

B. Rampton and Jones Waldo Represent BCT in Disputes and Litigation with Philips Electronics.

10. In early 2005, Jones Waldo began representing BCT in responding to, and seeking resolution of, various threatened claims ("Threatened Claims") by one of BCT's competitors, Philips Electronics North America Corporation and its affiliates (collectively "Philips").[1] The

[1] It is unclear whether the terms and conditions of this representation on the Threatened Claims in 2005 and 2006 were memorialized in a written engagement agreement.

Threatened Claims included allegations that BCT was unfairly and illegally competing against Philips by, among other things, infringing Philips' intellectual property, illegally distributing Philips' software, and improperly soliciting and hiring key Philips employees.

11. Rampton served as the Jones Waldo lawyer primarily responsible for representing BCT's interests in connection with the Threatened Claims and Philips' subsequent lawsuit against BCT ("Philips Lawsuit").[2] All of Rampton's actions and omissions in his representation of BCT were undertaken within the course and scope of his employment by Jones Waldo, rendering Jones Waldo liable for his misconduct under the doctrine of respondeat superior.

12. By early 2008, the Threatened Claims against BCT remained unresolved. Philips accordingly initiated the Philips Lawsuit in the United States District Court, Western District of Washington.[3] Several months later, the Philips Lawsuit was transferred to the United States District Court, District of Utah.

13. The principal claims that Philips asserted against BCT in the Philips Lawsuit were for the alleged misappropriation of Philips' trade secrets, unfair competition and infringement of its copyrights and trademarks (collectively "Philips Lawsuit Claims"). According to BCT's then-president, Charles Hale, Rampton assured him on May 21, 2009 that BCT "had a very strong case and the chances of a bad judgment were very low." Unfortunately, Rampton's assurance proved to be inaccurate, as he and Jones Waldo proceeded to make a series of crucial

[2] It is BCT's understanding that the other Jones Waldo lawyers who worked on the Philips Lawsuit took their instructions from Rampton who, on information and belief, retained ultimate decision-making responsibility in the case.

[3] Jones Waldo performed extensive legal services for BCT in the Philips Lawsuit during the first several months of 2008, even though the Lawsuit was filed and then-pending in Washington. Whether those services were performed pursuant to a written engagement agreement is currently unknown. What is known is that in mid-2009, when BCT's stock was sold to BCT Holdings, Inc., a written engagement agreement (dated June 25, 2009) was prepared and signed.

mistakes that deprived BCT of its ability to establish defenses to the Philips Lawsuit Claims, ultimately prompting him to recommend that BCT seek bankruptcy relief.

14. One such mistake was Jones Waldo's failure to recognize and conclude that BCT's policies of general liability insurance likely afforded coverage for some of the Philips Lawsuit Claims and/or created a duty on the part of the insurer to defend the Claims at its expense. Specifically, throughout 2008 and 2009 (when the Philips Lawsuit Claims were asserted in Philips' initial and amended complaints), BCT was the named insured under both a general liability and an umbrella excess liability policy with combined coverage of $6 million for losses arising from so-called "advertising injury." Fairly read, many of the Philips Lawsuit Claims and the facts on which they were based fell within the policies' definition of, and afforded coverage for, "advertising injury." Jones Waldo, however, concluded that no insurance coverage was in effect and therefore decided that no claim should be submitted to the insurer. This advice stripped BCT of nearly $6 million of likely coverage, and exposed it to a substantial attorney fee and cost payment obligation in the Philips Lawsuit that should have been borne by the insurer as part of its duty to defend.

15. In addition, the assertion and pendency of the Philips Lawsuit Claims imposed several important duties on Rampton and Jones Waldo in their representation of BCT. One such duty was to (a) ascertain from all BCT employees who had previously worked for, and signed expansive confidentiality agreements in favor of, Philips what confidential information, if any, they had taken from Philips for use by BCT, and (b) assure that such information was appropriately identified, segregated, secured and preserved. Another duty was to assure that BCT remained in good standing with the federal court by fully and diligently performing its

discovery response obligations. Yet another duty was to fully apprise BCT and its employees of their essential, ongoing legal obligation to identify, preserve and maintain all evidence relevant and even potentially relevant to the Philips Lawsuit. Jones Waldo, as detailed below, failed badly on all counts.

C. Rampton and Jones Waldo Mishandle the Discovery Phase of the Philips Lawsuit.

16. In early 2009 as the Philips Lawsuit moved into the critically important discovery phase, Rampton and Jones Waldo knew that BCT, as an organization, had little or no meaningful understanding of the nature and extent of its obligations to identify, disclose, preserve and secure documents relevant to the Philips Lawsuit Claims. Indeed, Rampton and Jones Waldo knew that although BCT had about 100 employees, BCT was largely overseen by its principal founders, Charles Hale ("Mr. Hale") and Beverly Hale (collectively "Hales") -- individuals who had little, if any, significant experience in or understanding of litigation requirements, in general, or document preservation obligations, in particular. Unfortunately, Rampton and Jones Waldo failed to recognize the risks posed by its client's lack of litigation experience. By doing so, they failed to competently guide BCT through the perilous minefield of potential pitfalls that characterize discovery in complex federal court lawsuits. These failures ultimately helped doom BCT's defense in the Philips Lawsuit.

17. Rampton's and Jones Waldo's approach to gathering information and conducting discovery in the Philips Lawsuit was a lethal blend of obstruction[4] and incompetence, resulting in at least five court orders (collectively "Discovery Orders") compelling BCT to perform its discovery obligations. The cumulative effect of the Discovery Orders was to irrevocably erode and ultimately eviscerate BCT's credibility with the court, and elevate the risk of an adverse outcome when Philips later asserted that BCT had destroyed evidence relevant to the Philips Lawsuit Claims.

18. The first of the Discovery Orders was entered on June 1, 2009. It granted Philips' first motion to compel, struck all of BCT's blanket objections to Philips' discovery requests, and ordered the immediate production of all relevant requested documents.

19. The second of the Discovery Orders was also entered on June 1, 2009. It granted Philips' motion for protective order, and denied BCT's cross-motion for the same relief.

20. The third of the Discovery Orders was entered on August 21, 2009 ("August 21 Discovery Order"). Entitled "Order Granting Plaintiff's Motion to Compel Defendant to Preserve Relevant Information," it directed BCT to prepare and circulate "a thorough litigation hold memo to employees," provide all "existing backup tapes to its attorneys," "suspend the practice of overwriting any information on those backup tapes," and cease "wiping" or "reimaging" the "hard drives of employees likely to have relevant information."

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[4] For example, one of the central allegations in the Philips Lawsuit was that BCT had misappropriated copies of Philips' TAC database. According to BCT's former president (Mr. Hale), Rampton urged him to destroy this important evidence. Specifically, in an August 25, 2009 email to a former BCT executive, Mr. Hale wrote: "I remember that Vince [Rampton] had advices [sic] us to get rid of it [the TAC database] and we had that meeting and then had Mike Dennison purge it from the system."

21. The fourth of the Discovery Orders was entered on September 2, 2009. It granted Philips' third motion to compel, directing BCT to produce several categories of requested documents.

22. The fifth of the Discovery Orders was entered on September 28, 2009. It granted Philips' fourth motion to compel, (a) approving and adopting an arrangement for the preservation of electronically stored information ("ESI"), (b) compelling BCT to fully answer several interrogatories, and (c) imposing sanctions, through an award of attorney fees and costs, against BCT. [5]

23. The net effect of the Discovery Orders -- each of which flowed from Rampton's and Jones Waldo's inexplicable failure to assure that BCT complied with its discovery response obligations -- was devastating to BCT: It sorely tested the court's remaining patience, if any, with BCT's defense of the Philips Lawsuit Claims, generally, and strongly influenced its substantive response to Philips' ensuing motion for spoliation sanctions, specifically. Indeed, as the court later determined, "[h]ad BCT fulfilled its discovery obligations in the first place, the issue of [deletion of] personal information, relevant information, or what the employees subjectively thought likely would not [have become] an issue."[6]

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[5] Rampton admitted at the September 23, 2009 court hearing that "we are where we are because I overlooked the necessity of getting these [discovery responses or objections] in," and that it was his "screwup." In an October 2, 2009 letter to BCT, he reconfirmed that this Discovery Order was attributable to "an inadvertence on my part."

[6] *Magistrate Judge Report and Recommendation, dated July 27, 2010* ("Report") at 101.

D. Rampton and Jones Waldo Fail to Assure That BCT and Its Employees Preserve Evidence Relevant to the Philips Lawsuit Claims.

24. During the Philips Lawsuit, neither Rampton nor any other Jones Waldo lawyer adequately advised BCT and its employees of their critically important, ongoing obligation to preserve and maintain documents, including ESI, relevant or potentially relevant to the parties' claims and defenses. Specifically, there is no indication that Rampton or Jones Waldo ever timely or adequately apprised BCT and its employees of: (a) the nature and extent of the Philips Lawsuit Claims; (b) the substance and extent of their obligation to identify and preserve all documents and ESI relevant and potentially relevant to the Philips Lawsuit Claims; and (c) the importance of BCT's need to comply with its discovery response obligations.[7]

25. It appears that it was not until June 23, 2009, for example, that Rampton or Jones Waldo even potentially counseled BCT about its obligation to preserve evidence. On that date -- just after being deposed in the Philips Lawsuit and acknowledging that BCT (under Jones Waldo's counsel) had done little to identify and preserve relevant documents -- BCT's chief operating officer sent an email to BCT's employees "remind[ing]" them to "save any electronic records that could possibly be associated in any way to the Philips litigation." The court in the Philips Lawsuit, however, later characterized this email as "cursory" and "ineffective."[8]

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[7] Nor is there any indication that Rampton or Jones Waldo made any effort to ascertain from several BCT employees who had formerly worked for Philips whether and to what extent they had taken any Philips confidential information, in general, and had made or were making it available for use by BCT, in particular.

[8] As the court concluded: "Significantly, this email did not tell BCT employees what the Philips Lawsuit was about, nor did it identify what types or categories of documents should be preserved." *Report* at 93.

26. During the next few weeks, Rampton and Jones Waldo remained oblivious to the need to preserve relevant documents. By July 15, 2009, the Philips Lawsuit had been pending for over 18 months. At that point, Philips moved to compel BCT to preserve relevant information. In its motion, Philips expressed concerns that BCT had (a) failed to issue a litigation hold memo to its employees to preserve information, (b) failed to modify or suspend document destruction practices in light of the litigation, (c) failed to image the hard drives of its key custodians, (d) continued its practice of routinely overwriting back-up tapes, and (e) destroyed or was destroying key evidence. The court agreed, orally granting Philips' motion during a hearing on August 18, 2009, at which Rampton assured the court that he understood the order's requirements, and that BCT would "follow it." The court's oral ruling was embodied in the August 21, 2009 Discovery Order described in paragraph 20 above.

27. On August 25, 2009 -- nearly twenty months after the Philips Lawsuit was filed, more than five weeks after Philips complained to the court about deficiencies in BCT's document preservation practices, and only in response to the court's directive at the August 18 hearing -- Jones Waldo finally helped assure that a litigation hold memo ("August 2009 Litigation Hold Memo") was circulated by BCT to its employees.

28. However, the court concluded that the August 2009 Litigation Hold Memo was ultimately much too little, far too late. The court sharply criticized its timing, substance and effect, declaring:

> Simply sending the short June 23 memo and the Litigation Hold Memo by email [on August 25, 2009] was not enough of an active and earnest effort on BCT's part to effectively communicate with BCT's employees and to preserve evidence. Also, other commonsense actions were not taken to preserve evidence, such as interviewing key employees or even asking them to produce discoverable information. BCT appears to have been

> merely going through the motions rather than genuinely trying to preserve evidence since this method of communication was known to be unreliable and ineffective within the company; thus, BCT was not fulfilling its responsibility to diligently and thoroughly ensure that relevant documents were preserved.[9]

29. Nor, importantly, did Rampton or Jones Waldo comply with the court's August 21 Discovery Order that they take possession of all "existing backup tapes." And they further failed to adequately monitor BCT's compliance with the August 21 Discovery Order's requirements that no "overwriting" of "any information on those backup tapes" was to occur and that no "wiping" or "reimaging" the "hard drives of employees likely to have relevant information" was to occur. Indeed, for the next four-plus weeks, Rampton and Jones Waldo did little to comply with these urgent requirements of the Order. Had they done so, the legal effect of the subsequent destruction of ESI by BCT employees on and after September 22, 2009 (as described in paragraphs 30, 31, and 34 below) would have been far less serious: virtually all of the destroyed documents would have been in the possession of, and/or accessible by, Jones Waldo for delivery to Philips. This, in turn, would have assured that Philips received all or most of the ESI to which it was entitled, thereby avoiding the possibility that spoliation or contempt sanctions to strike BCT's pleadings would be sought, let alone granted.

30. Under Rampton's and Jones Waldo's watch, discovery compliance and document production deficiencies continued unabated. At a court hearing on September 22, 2009 -- by which point Jones Waldo still had failed to comply with the substance and spirit of the August 21 Discovery Order by securing and taking possession of ESI on the BCT company server and on the hard drives of laptop computers that BCT had provided to its employees -- BCT was ordered

[9] *Report* at 96.

to turn over its computers and servers for collection and analysis by Philips' forensic expert.[10] Before BCT did so, however, several of its employees deleted from these computers ESI relevant to the Philips Lawsuit Claims -- the same information Rampton and Jones Waldo had been ordered more than a month before to help locate, secure and preserve.[11]

E. Philips Moves for Spoliation and Contempt Sanctions Against BCT.

31. On December 21, 2009, Philips filed a motion for spoliation sanctions and motion for contempt against BCT (collectively "First Spoliation and Contempt Motion").[12] There, it asserted that on and shortly after September 22, 2009 several BCT employees had improperly deleted thousands of computer file documents (ESI) relevant to the Philips Lawsuit Claims.

32. Rampton and Jones Waldo opposed the First Spoliation and Contempt Motion in a series of memoranda, sworn affidavits (collectively "Affidavits") and exhibits filed on January 15 and 22, 2010. Among these papers was a request that the court schedule an evidentiary hearing to allow BCT to present and develop live testimony from each of the affiants who had signed the Affidavits[13] that Jones Waldo lawyers, under Rampton's supervision, had prepared and filed.

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[10] As the court later noted, this turnover order was prompted by BCT's failure to "comply[] [through Jones Waldo and Rampton] with discovery requests due in July." *Report* at 8. These are the same discovery requests that Rampton admitted he overlooked. *See,* ¶ 22 at n. 5 above.

[11] Indeed, as the court later determined, the ESI that was destroyed is the same ESI covered by the August 21 Discovery Order and the September 22, 2009 oral order: "obviously deleting and wiping the ESI on the five BCT laptops foiled the orders' purpose." *Report* at 72.

[12] Philips filed a second Spoliation and Contempt Motion in February 2010.

[13] According to Philips' counsel, the decision by Rampton and Jones Waldo to provide live testimony from the BCT affiants was an extraordinary litigation "gift" to Philips. Because the affiants resided outside the state of Utah and the fact discovery deadline had expired several months before, Philips would have been unable to compel their attendance at, or testimony in, any hearing on the First Spoliation and Contempt Motion. Thus, if these witnesses had not been offered up voluntarily by Rampton and Jones Waldo, Philips could not have exploited them in the way it did at the evidentiary hearing a few weeks later.

33. On January 26, 2010, the court granted BCT's request, setting a two-day evidentiary hearing for mid-February.

34. A few days later, on January 29, Philips filed its reply memorandum in support of the First Spoliation and Contempt Motion, arguing that (a) soon after the court announced its ruling on September 22, 2009 that BCT was to immediately deliver its computers to Philips' expert, several BCT employees had destroyed ESI relevant to the Philips Lawsuit Claims, and (b) substantial portions of the Affidavits that Jones Waldo had prepared and filed with the court under penalty of perjury were materially inaccurate, incomplete, and misleading.[14]

35. In an apparently panicked response to Philips' reply memorandum, Jones Waldo (through Rampton) immediately attempted to withdraw its request for the already-granted and scheduled evidentiary hearing.

36. The court, however, refused to strike the evidentiary hearing. It went forward as scheduled on February 10 and 11, 2010.[15] As the court later concluded, "BCT's attempt to withdraw the evidentiary hearing and leave the court with false declarations [the Affidavits]

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[14] The court later ruled that the Jones Waldo-drafted Affidavits "proved to be full of falsehoods and [ ] on their face were contrary to the findings of BCT's own computer forensic expert, who confirmed everything found by Philips' expert." *Report* at 106.

[15] During the evidentiary hearing on the Spoliation and Contempt Motion, several BCT employees confirmed that, among other things, Jones Waldo had failed to notify them of (a) the claims asserted in the Philips Lawsuit, (b) their duty to locate and preserve documents and other information relevant to the Philips Lawsuit, and (c) the existence or effect of the Discovery Orders. One of these employees disclosed at the hearing that it was not until the day before that anyone from Jones Waldo even told him that his deletions of ESI several months before were even at issue.

appears to be an attempt to perpetrate a fraud on the court." *Report* at 106. The court further concluded that Rampton had made at least three "false representations" at the evidentiary hearing, *id.* at 86, and rebuked him for not timely "interview[ing] all the witnesses." *Id.* at 106.

37. On February 17, 2010, Philips filed a second motion for spoliation sanctions and motion for contempt against BCT (collectively "Second Spoliation and Contempt Motion").[16] At that point, Rampton urged BCT to file a bankruptcy petition.

38. Several weeks later on April 10, 2010 -- some three days before he appeared and argued at the continued hearing on the First Spoliation and Contempt Motion and the Second Spoliation and Contempt Motion -- Rampton suddenly asserted that an irreconcilable conflict of interest had developed that would require him and Jones Waldo to withdraw as BCT's legal counsel.[17] They did so on April 20, 2010.

F. The Court Strikes BCT's Pleadings and Enters a Default Judgment on the Issue of Its Liability to Philips.

39. Rampton's apparent sense of impending doom for BCT soon proved prophetic. In the 117-page Report, the magistrate judge in the Philips Lawsuit granted Philips' two Spoliation and Contempt Motions. Replete with scathing observations and denunciations of

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[16] Rampton's principal response to the Second Spoliation and Contempt Motion was to prepare and file a witness Declaration from a key BCT employee, Edward Sokolowski. The Declaration, however, contained a significant uncompleted blank that made the Declaration "incomplete." *Report* at 53. Palpably irritated by this fact, the federal magistrate pointedly observed:

> BCT did not fill in the blank as to what file folder Sokolowski deleted. Further, as set forth above, both [parties' experts] agree that Sokolowski deleted not one folder, but multiple folders; however, when Philips notified BCT of its error and omission regarding the unidentified deleted file folder, BCT did not respond. BCT did not issue a supplemental declaration or an errata. BCT simply did not respond.

[17] Rampton's stated rationale for the withdrawal was that the interests of BCT, on the one hand, and BCT's former majority shareholder and president, Mr. Hale, on the other, had diverged. While Rampton soon withdrew as BCT's counsel, he remained as Mr. Hale's counsel. By doing so, Rampton effectively decided to favor one of his clients (Mr. Hale) over another of his clients (BCT).

Rampton's and Jones Waldo's role in the litigation downfall of BCT, the Report declared that "the litigants and counsel were expected to take the necessary steps to ensure that relevant records were preserved when litigation was reasonably anticipated or began, and that those records were collected, reviewed, and produced to the opposing party during the discovery process." *Report* at 1. The Report repeatedly noted that none of these "necessary steps" were taken.

40. The Report further determined that the Jones Waldo-drafted "motions before the court have been heavily peppered with dishonesty, fraud on the court and indifference or contempt of these proceedings." *Id.* at 115.

41. The Report suggested that Jones Waldo was grossly negligent in failing to assure (a) BCT's timely preparation and circulation of a written litigation hold memo, and (b) the "collection and review of [BCT's] evidence." *Id.* at 90. As the Report declared, "[u]nder current law, the failure to issue a written litigation hold constitute[s] gross negligence because it was likely to result in destruction of relevant information," as is the "failure to collect either paper or electronic records from key players." *Id.*

42. The Report further concluded that under settled law "[a] party's discovery obligations do not end with the implementation of a litigation hold [which indeed is] only the beginning." *Id.* at 100 (quoting *Zubulake v. UBS Warburg, LLC*, 229 F.R.D. 422, 432 (S.D.N.Y. 2004). The Report further quoted *Zubulake*:

> Counsel must oversee compliance with the litigation hold, monitoring the party's efforts to retain and produce the relevant documents. Proper communication between a party and her lawyer will ensure (1) that the relevant information (or at least all sources of relevant information) is discovered, (2) that relevant information is retained on a continuous basis,

> and (3) that relevant nonprivileged material is produced to the opposing party.
>
> . . .
>
> Unless counsel interviews each employee, it is impossible to determine whether all potential sources of information have been inspected.

Id.

43. As the Report also detailed:

> The evidence offered at the Hearing revealed a disparity between these discovery principles and what happened in this case. BCT employees were not informed about the litigation or what it involved. The witnesses testified that they were never asked to produce documents in discovery... Many of these witnesses were never interviewed at all until 2010, after the motion for spoliation had been filed in December 2009. [Mr.] Albuquerque, one of BCT's Vice Presidents, was not told any details of this litigation until February 9, 2010, the day before the Hearing.

Id. at 100.

44. The Report recommended that BCT's answer be stricken, its counterclaim dismissed, a default judgment entered on the issue of BCT's liability, and monetary sanctions imposed.[18]

45. Even though Jones Waldo soon billed BCT for nearly five hours of time that Rampton spent to read and analyze the Report, Jones Waldo filed no objections to the Report or otherwise sought to challenge the court's accusations that they had failed in their discovery duties and had "attempt[ed] to perpetrate a fraud on the court." *Report* at 106.

46. In overruling BCT's objections, the district judge in the Philips Lawsuit approved and adopted the Report "in its entirety" in a Memorandum Decision and Order dated February 15, 2011, characterizing the Report as "thorough and carefully reasoned."

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[18] In a September 9, 2010 Order, the court directed BCT to pay attorney fees and costs in the amount of $279,694.84 within thirty days. BCT did so. In yet another Order, BCT was instructed to pay an additional $15,000 of fees and costs as a sanction for discovery abuses. Again, BCT did so.

G. BCT Agrees to Settle the Philips Lawsuit.

47. The striking of its pleadings and entry of a default judgment on the issue of liability placed BCT in a hopeless litigation position. BCT's only viable option to contain and mitigate its losses was to reach a negotiated settlement with Philips.

48. Under a settlement agreement executed on March 16, 2011, BCT recently paid $10 million to resolve the Philips Lawsuit which, when added to the $294,694.84 of court-ordered fees and costs that BCT paid, means that BCT has sustained financial losses of at least $10,294,694.84 in a case that Rampton promised was "very strong" and the "chances of a bad judgment were very low."

FIRST CLAIM FOR RELIEF

(Professional Negligence: Jones Waldo and Rampton)

49. The allegations in paragraphs 1-48 above and 57-60 below are incorporated herein by reference.

50. Jones Waldo and Rampton not only owed BCT a duty to exercise reasonable care and diligence to assure that BCT's interests in the Philips Lawsuit were fully and timely protected, they owed an elevated duty to exercise exceptional care to achieve the "innovative solutions," use their "expertise to solve complex client needs," and employ their experience and skill in "business-related litigation," as touted to the public on Jones Waldo's website.

51. The duties that Jones Waldo and Rampton owed to BCT include, but are not limited to:

a. Accurately and effectively analyzing BCT's liability insurance policies to verify the existence or probable existence of coverage for, and/or a duty to defend, at least some

of the Philips Lawsuit Claims, and help assure submission to the carrier of a notice of claim(s) under the policies;

b. Promptly and fully ascertaining from the BCT employees who had been formerly employed by, and had signed confidentiality agreements with, Philips of the nature and extent to which they possessed and were using Philips' confidential information;

c. Clearly and timely informing BCT of the scope, substance and meaning of the claims at issue in the Philips Lawsuit;

d. Fully and promptly advising BCT of its obligation to identify, assemble, secure and preserve relevant discoverable evidence, including ESI;

e. Keeping BCT in compliance with its discovery obligations in the Philips Lawsuit;

f. Assuring BCT's compliance with the requirements of the August 21, 2009 Discovery Order, and promptly taking possession of the ESI on the BCT computers that were later turned over to Philips' expert for forensic analysis; and

g. Assuring that BCT's rights to be zealously represented were not diluted by legally or ethically actionable conflicts of interest.

52. Through the conduct alleged in this Complaint, Jones Waldo and Rampton breached their duty of both ordinary and exceptional care and diligence to BCT, as a proximate result of which BCT has suffered injury and damages in the principal amount of at least $10,294,694.84, plus interest, attorney fees and costs.

SECOND CLAIM FOR RELIEF
(Breach of Contract: Jones Waldo)

53. The allegations in paragraphs 1-52 above are incorporated herein by reference.

54. Through the conduct alleged in this Complaint, Jones Waldo materially breached its express and implied contractual obligations to BCT that it would take all action legally necessary and appropriate to protect BCT's interests in the Philips Lawsuit; that it would perform all legal services with due care and diligence; and that it would provide BCT with professionally competent, skilled and careful lawyers to handle the Lawsuit.

55. As a proximate result of Jones Waldo's material breach of contract, BCT has suffered injury and damages in the principal amount of at least $10,294,694.84, plus interest, attorney fees and costs.

THIRD CLAIM FOR RELIEF
(Breach of Fiduciary Duty: Jones Waldo and Rampton)

56. The allegations in paragraphs 1-55 above are incorporated herein by reference.

57. As legal counsel for BCT, Jones Waldo and Rampton owed BCT an unqualified fiduciary duty of loyalty, due care and good faith. This duty required, at a minimum, that they (a) take all action legally necessary and appropriate to protect BCT's interests in the Philips Lawsuit, (b) refrain from conduct that could expose BCT to unnecessary or unreasonable financial harm, and (c) act solely in BCT's best interests.

58. Throughout the Philips Lawsuit, Jones Waldo's and Rampton's representation of BCT was tainted by conflicts of interest that prevented BCT from receiving the full benefit of zealous legal representation to which it was entitled. These conflicts of interest include:

(a) Conflict Arising from Concurrent Representation of Clients with Competing Interests. Long before Jones Waldo and Rampton began representing BCT in the Threatened Claims and the Philips Lawsuit, they served as legal counsel for Mr. Hale in one or more personal matters, including an employment-related dispute. Thereafter, Jones Waldo and Rampton represented Mr. Hale and his wife in several substantial, large fee-producing matters, including (i) a contentious, six-year lawsuit over the construction of, and payment for, two custom homes, and (ii) a significant transaction for their mid-2009 sale of BCT stock ("Stock Purchase Transaction"). Through their representation of the Hales in these and other matters, Jones Waldo and Rampton grasped the importance of zealously serving the Hales' personal legal needs to assure Jones Waldo's and Rampton's ongoing receipt of substantial fee income. This, in turn, precluded Jones Waldo and Rampton from properly representing BCT's interests in the Philips Lawsuit when those interests began to diverge from the Hales. The clear potential for this divergence was expressly acknowledged by Jones Waldo and Rampton in their June 25, 2009 letter agreement with BCT ("2009 Engagement Agreement"). In the 2009 Engagement Agreement (which Mr. Hale signed for BCT), they acknowledged that under the Stock Purchase Transaction in which the Hales received about $10 million, Jones Waldo would treat the Hales as "the real parties in interest in the Philips Litigation." By doing so, Jones Waldo and Rampton effectively elevated the interests of the Hales over those of BCT. This subordination of BCT's interests in the Philips Lawsuit helps explain why Jones Waldo and Rampton never asked the federal court to attribute to Mr. Hale responsibility for BCT's document preservation and discovery deficiencies, and why they never recommended that BCT take appropriate steps to distance itself from the personal actions of the BCT employees that the court identified in its

Report. In other words, because of the conflict of interest that arose from Jones Waldo's and Rampton's long-standing and profitable representation of the Hales, they failed to zealously defend BCT, as an entity, by seeking to shift the judicial focus to Mr. Hale, as an individual.

(b) Conflict Arising from Personal Interest. During the discovery phase of the Philips Lawsuit, it became (or reasonably should have become) apparent to Jones Waldo and Rampton that they had failed to perform their obligations to (i) inform BCT and its employees of the nature of the claims asserted in the Philips Lawsuit; (ii) identify, locate and preserve discoverable information and documents; (iii) stay in good standing with the court as they responded to Philips' discovery requests; and (iv) be proactive and diligent in their defense of BCT. As Philips continued to submit filings that challenged and sought relief against the many discovery problems and deficiencies that Jones Waldo and Rampton had created and helped to create -- and as the court continued to rule in Philips' favor on these filings -- Jones Waldo and Rampton could and should have urged the court not to penalize BCT for problems for which Jones Waldo and Rampton were primarily responsible. Although Rampton occasionally conceded that he was to blame for some of BCT's discovery response failures, neither he nor anyone else from Jones Waldo ever notified BCT that (i) they had a strong professional incentive not to take responsibility for their mismanagement of BCT's discovery obligations, and (ii) one potentially effective way to keep BCT in good standing with the court would be for them to accept such responsibility and thereby deflect from their client (BCT) to themselves at least some of the court's escalating impatience with the way discovery was unfolding. Nor did Jones Waldo and Rampton urge BCT to seek independent counsel to evaluate whether it would be better served by replacement lawyers untainted by an actual or apparent conflict of interest.

(c) Conflict Arising From Financial Incentives. The 2009 Engagement Agreement between Jones Waldo and BCT recognized that the Stock Purchase Transaction made the Hales personally responsible for the payment of fees Jones Waldo billed in the Philips Lawsuit. This reality gave Jones Waldo and Rampton a financial incentive to limit work performed for BCT in the Lawsuit, and thereby reduce the fees for which their favored clients, the Hales, would ultimately be responsible. While this incentive appeared to provide a financial benefit to BCT by lowering the amount of fees for which it was contractually obligated, the benefit came with an ominous, undisclosed cost: the probability that Jones Waldo's and Rampton's minimalist and largely passive approach to defending BCT in the Philips Lawsuit would result in an epic financial loss -- an outcome that in fact occurred.

59. The remarkable extent to which Jones Waldo and Rampton were beholden to the Hales at the expense of BCT became clearly evident when, on April 10, 2010, Rampton unexpectedly declared that the interests of his clients, BCT and the Hales, were in conflict. Within ten days -- and on the cusp of the anticipated scheduling of a trial date -- Jones Waldo and Rampton precipitously withdrew as BCT's counsel. Consistent with their clear allegiance to their favored client (the Hales), however, they continued to represent the Hales in other pending matters as BCT labored to engage at enormous financial cost replacement counsel to attempt to salvage BCT's impaired condition in the Philips Lawsuit.

60. Through the conduct alleged in this Complaint generally, and in paragraphs 38, 58 and 59 specifically, Jones Waldo and Rampton have breached their fiduciary duty to BCT, as a proximate result of which BCT has suffered injury and damages in the principal amount of at least $10,294,694.84, plus interest, attorney fees and costs.

61. If it is determined that the conduct of Jones Waldo and Rampton is willful and malicious, or manifests a knowing and reckless indifference toward, and a disregard of, BCT's rights, punitive damages in an amount equal to at least three hundred percent (300%) of BCT's proven compensatory damages should be awarded.

WHEREFORE, BCT demands (a) trial by jury, (b) judgment against Jones Waldo and Rampton for compensatory damages in the principal amount of at least $10,294,694.84, punitive damages, interest, attorney fees, costs, and (c) such further relief as the Court deems just.

DATED: August 31, 2011.

ANDERSON & KARRENBERG

John T. Anderson
Counsel for Plaintiff

Plaintiff's Address:
7172 South Airport Road
West Jordan, UT 84084

Cover Sheet for Civil Actions

Interpretation. If you do not speak or understand English, contact the court at least 3 days before the hearing, and an interpreter will be provided.

Interpretación. Si usted no habla o entiende el Inglés contacte al tribunal por lo menos 3 días antes de la audiencia y le proveerán un intérprete.

First Plaintiff/Petitioner

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Second Plaintiff/Petitioner

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Second Plaintiff/Petitioner's Attorney

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First Defendant/Respondent

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Second Defendant/Respondent

Name
Address
City, State, Zip
Phone
Email

Second Defendant/Respondent's Attorney

Name
Bar Number
Address
City, State, Zip
Phone
Email

Total Claim for Damages $ 10,000,000

Jury Demand ■ Yes ☐ No

Schedule of Fees: §78a-2-301 (Choose ☒ all that apply. See Page 2 for fees for claims other than claims for damages.)

— — COMPLAINT OR INTERPLEADER— —

- $75 ☐ Damages $2000 or less
- $185 ☐ Damages $2001 - $9999
- $360 ■ Damages $10,000 & over
- $360 ☐ Damages Unspecified

— COUNTERCLAIM, CROSS CLAIM, THIRD PARTY CLAIM, OR INTERVENTION —

- $55 ☐ Damages $2000 or less
- $150 ☐ Damages $2001 - $9999
- $155 ☐ Damages $10,000 & over

— — — — MISCELLANEOUS — — — —

- $250 ■ Jury Demand

— — — — SMALL CLAIMS — — — —

- $60 ☐ Damages $2000 or less
- $100 ☐ Damages $2001 - $7,499
- $185 ☐ Damages $7,500 - $10,000
- $50 ☐ Counterclaim $2000 or less
- $70 ☐ Counterclaim $2001 - $7,499
- $120 ☐ Counterclaim $7,500 - $10,000

— — MOTION TO RENEW JUDGMENT — —

- $37.50 ☐ Damages $2000 or less
- $92.50 ☐ Damages $2001 - $9,999
- $180.00 ☐ Damages $10,000 & over

Cover Sheet for Civil Actions

Choose ☒ Only One Category

Fee		Case Type
		APPEALS
$360	☐	Administrative Agency Review
$225	☐	Civil (78A-2-301(1)(h))
$225	☐	Small Claims Trial de Novo
Sch	☐	Tax (Court: Refer filing to Clerk of Court)
		GENERAL CIVIL
$360	☐	Attorney Discipline
Sch	☐	Civil Rights
$0	☐	Civil Stalking
$360	☐	Condemnation/Eminent Domain
Sch	☐	Contract
Sch	☐	Debt Collection
Sch	☐	Eviction/Forcible Entry and Detainer
$135	☐	Expungement
$360	☐	Extraordinary Relief/Writs
$360	☐	Forfeiture of Property
Sch	☐	Interpleader
Sch	☐	Lien/Mortgage Foreclosure
Sch	■	Malpractice (Legal)
Sch	☐	Miscellaneous Civil
Sch	☐	Personal Injury
$360	☐	Post Conviction Relief: Capital
$360	☐	Post Conviction Relief: Non-capital
Sch	☐	Property Damage
Sch	☐	Property Rights
Sch	☐	Sexual Harassment
Sch	☐	Water Rights
Sch	☐	Wrongful Death
$360	☐	Wrongful Lien
Sch	☐	Wrongful Termination
		DOMESTIC
$0	☐	Cohabitant Abuse
$310	☐	Marriage Adjudication (Common Law)
$310	☐	Custody/Visitation/ Support
$310	☐	Divorce/Annulment ☐ Check if child support, custody or parent-time will be part of decree ☐ Check if Temporary Separation filed
$8	☐	Vital Statistics §26-2-25 per form
$115	☐	Counterclaim: Divorce/Sep Maint
$115	☐	Counterclaim: Custody/Visitation/ Support
$155	☐	Counterclaim: Paternity/Grandparent Visitation

Fee		Case Type
$100	☐	Domestic Modification
$100	☐	Counter-petition: Domestic Modification
$35	☐	Foreign Domestic Decree
$360	☐	Grandparent Visitation
$360	☐	Paternity/Parentage
$310	☐	Separate Maintenance
$35	☐	Temporary Separation
$35	☐	Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA)
$35	☐	Uniform Interstate Family Support Act (UIFSA)
		JUDGMENTS
$35	☐	Foreign Judgment (Abstract of)
$50	☐	Abstract of Judgment/Order of Utah Court/Agency
$30	☐	Abstract of Judgment/Order of Utah State Tax Commission
$35	☐	Judgment by Confession
		PROBATE
$360	☐	Adoption/Foreign Adoption
$8	☐	Vital Statistics §26-2-25 per form
$360	☐	Conservatorship
$360	☐	Estate Personal Rep - Formal
$360	☐	Estate Personal Rep - Informal
$35	☐	Foreign Probate/Child Custody Doc.
$360	☐	Gestational Agreement
$360	☐	Guardianship
$0	☐	Involuntary Commitment
$360	☐	Minor's Settlement
$360	☐	Name Change
$360	☐	Supervised Administration
$360	☐	Trusts
$360	☐	Unspecified Probate
		SPECIAL MATTERS
$35	☐	Arbitration Award
$0	☐	Determination Competency-Criminal
$0	☐	Hospital Lien
$35	☐	Judicial Approval of Document: Not Part of Pending Case
$35	☐	Notice of Deposition in Out-of-State Case/Foreign Subpoena
$35	☐	Open Sealed Record