

## Texas Jury Hits GE For \$44M Anesthesia Machine Monopoly

By Jess Krochtengel

*Law360, Dallas (April 27, 2017, 4:20 PM EDT)* -- A Texas federal jury on Wednesday found General Electric Co. had a nationwide monopoly on the sale and servicing of anesthesia machines and engaged in anti-competitive conduct that caused more than \$43.7 million in damage to 17 anesthesia businesses from across the country.

The verdict, returned by a unanimous jury in the Eastern District of Texas after a weeklong trial, should be automatically trebled, according to a statement released by Sam Baxter of McKool Smith PC, an attorney for the plaintiffs. And injunctive relief and attorneys' fees could also be awarded, he said.

The anesthesia companies alleged in their complaint that GE, one of the largest manufacturers of anesthesia gas machines in the country, changed its sales policy in 2011 to no longer sell parts for the machines directly at wholesale prices. They claimed that GE appointed Alpha Source Inc. as the sole source of service parts, and that Alpha Source then charged them "highly inflated" prices in what the plaintiffs allege was an unreasonable restraint on trade and would lead to the complete elimination of any rivals to service anesthesia machines.

According to the complaint, Alpha Source sold parts at 18 to 20 percent above GE's published list price, while customers that bought parts directly from GE would receive discounts of 20 to 40 percent from the list price, rendering competition "incredibly difficult, if not impossible."

"The verdict was a call for fairness in business, and it was a real victory for the little guys that were brave enough to take on a major corporation," Baxter said in the statement. "We are pleased with the jury's decision."

Counsel for the plaintiffs did not respond to a request for comment beyond the statement, and counsel for GE did not immediately respond to requests for comment on the verdict.

The jury found GE acquired or maintained monopoly power by anticompetitive conduct within the relevant markets, based on four allegedly anti-competitive actions: the Alpha Source agreement, training policies, GE marketing communications, and software notifications and update policies, according to the verdict. The jury also found GE had a specific intent to achieve monopoly power and that there was a dangerous probability that GE would achieve that goal.

GE had argued the plaintiffs failed to meet their burden to properly define a relevant market for their servicing claims, saying the relevant geographic market could not be "nationwide." It denied having

monopoly power or a dangerous probability of attaining it in the market and said there had been no anti-competitive refusal to deal.

GE said in a motion for judgment filed during the trial it had legitimate business reasons for its policies, saying it enlisted Alpha Source as a distributor to mitigate and reduce the burdens caused by independent service companies “abusing GE’s warehousing and logistics services” and to reduce the costs of providing customer service. GE argued it had no duty to train or sell parts directly to competitors and said there’s no evidence of harm to customers.

Damages awarded for the plaintiffs ranged from \$50,000 to \$12.18 million.

The plaintiffs are Red Lion Medical Safety Inc. based in Delaware; Universal Medical Services Inc., based in Pennsylvania; Metropolitan Medical Services of NC Inc., based in North Carolina; Biomedical Concepts, based in Louisiana; Anesthesia Services Inc., based in Oklahoma; Diversified Anesthesia LLC, based in Kentucky; Paragon Service, based in Michigan; Bay State Anesthesia Inc., based in Massachusetts; POPN Inc., based in Pennsylvania; GasMedix LLC, based in Indiana; West Coast Anesthesia Specialists Inc., based in California; Palo Verde Biomedical Consultants LLC, based in Arizona; Heartland Medical Sales & Services LLC, based in Kentucky; Medical Application Repair and Sales LLC, based in South Carolina; Gulfstream Anesthesia Services Inc. d/b/a Doctors Depot, based in Florida; SAS Acquisitions Inc. d/b/a Anesthesia Specialists, based in Ohio; and Trinity Biomedical Solutions Inc., based in Pennsylvania.

The plaintiffs were represented by Sam Baxter, Jennifer Truelove, John Briody, Radu Leletiu, James Smith, Dana Vallera, Colleen Bloss and Dustin Howell of McKool Smith PC, Paul F. Ferguson Jr. of The Ferguson Law Firm and Paul Bartlett Jr.

The GE parties were represented by Trey Cox, Christopher Schwegmann, Chris Patton and Ben Barnes of Lynn Pinker Cox & Hurst LLP, and Jonathan Gleklen, Matthew Wolf and Ryan Watts of Arnold & Porter Kaye Scholer LLP.

The case is Red Lion Medical Safety Inc. et al. v. GE Co. Inc. et al., case number 2:15-cv-00308, in the U.S. District Court for the Eastern District of Texas.

--Editing by Jack Karp.