

CLOSING ARGUMENT

I. GENERAL DISCUSSION

A. Thank the jury

B. *You are a remarkable and unique jury*

1. 16 jurors – 4 alternates – *I wish all 16 could stay*

2. Over 2 months - no one left

(a) Endured personal tragedies

(b) Missed birthdays and family outings

3. Typically jurors ask to be excused

(a) **You probably had good reasons too**

4. *You could sense how important this case is*

5. **Just as Ed Vivanco watched** the Abbott case when it was fined for validation problems

(a) \$300M in 1998; and

(b) \$100M in 1999

(c) **Large companies from around the world are waiting for your decision**

C. This is a different world

1. Not governed by our checkbook
2. Waldron very capable - Flextronics can afford it

D. 9/11 Is a Day of Tragedy Yet a Day of Resolve

II. YOU PROMISED THE COURT

1. To Apply the correct burden of proof

- A. Preponderance
- B. Clear and convincing for punitives

2. *Differentiate the truth from lies - "In Search of Truth"*

3. Award damages in the millions if appropriate

4. Award punitive damages if the law allowed

A. **No remorse!**

5. To Follow the Jury Instructions

A. The amount of punitives can be **equivalent to the harm threatened or up to 4x**

B. Flex can pay any amount of punitives - *Arrogant*

1. Materiality - \$45 M - \$225 M

III. CASE INVOLVES 5 GENERAL AREAS

1. **Diametrically opposed clash in business philosophies**

- A. *Do the Right Thing – Quality Policy Statement*
- B. *Flextronics worships at the Altar of the Almighty Dollar.*
 - 1. *Make a buck at any cost to anyone*
 - 2. Money is all that Flextronics understands
- C. Defense is based upon Lies
 - 1. Putnam said Howard was wrong
 - 2. Neal said Zale was wrong
 - 3. The entire defense is wrong

2. Surcharge – Oppression and Fraud

- A. Howard lied to you, the Court and the Flag
 - 1. Imposed surcharge with *Gun in Hand*
 - 2. Deliberately overbilled – concealed
- B. Flextronics adopted Howard's statements
 - 1. Flextronics attempted to mislead you through numerous lies

3. Breach of five year contract

- A. Damages of \$2,144,785
- B. Total disregard of the impact on Beckman Coulter and the hospitals

4. Held the lifetime buys hostage

- A. *All or nothing – will destroy*
- B. *Zale’s tactics personify Flextronics’ business ethics*
- C. Zale lied (Nelson tel call)
 - 1. MacNamara laughed

5. Punitive Damages are needed to deter

- A. Howard, Zale, Ryan and Putnam were all comfortable lying to you
- B. While **McNamara laughed**
- C. Showed no sign of **remorse**
- D. Put the public health and safety in jeopardy to make a buck

IV. DISCUSSION OF THE WITNESSES

1. Dovatron Witnesses

- A. Steve Howard - V.P. and General Manger
 - 1. Knew the **products to be used in LX20**

Screen 1

- 2. *Gun in hand* – would have stopped production if no surcharge
 - (a) Regardless of impact on hospitals

3. **ESP**

Screen 2-3

4. Lied to you, the Court and deseccrated the oath

B. Donna Catone - Program Manager

1. Refused to lie under oath

Screen 4

2. Would have taken the *lie to her grave*

3. Admitted lying because her boss made her

4. Showed the documents proving Howard's lies

C. Lance Castro - Sales

1. Contract was for a fixed price

2. No right to surcharge under agreement

3. *Pestered Howard*

D. Terry Zale - General Manager

1. Admitted he reviewed the Contract

(a) Knew it was a breach

(b) The decision was final

Screen

5-6

2. Never consulted Beckman to see if 90 days would be sufficient

3. **Didn't care about the impact** of his actions on

H & S

public (a) Laughed at the thought of harm to the

4. **Held the life time buys Hostage**
5. Put Beckman on **C.O.D.**.
6. **Would have destroyed the parts** needed by all the hospitals – if not paid
7. **Lied about talking to Dan Nelson** on May 30, 2000 until confronted

E. Michael McNamara - Chief Operating Officer

1. **Laughed** at Zale's conduct – he would have **charged more**
2. Zale has the **business ethics he wants to nurture**
3. Knew PCBs went into medical instruments
4. Totally **disregarded the impact** of his decision on B & C and hospitals

Screen 7-8

5. **Never looked back** to see how B & C was affected
 - (a) Only looked back to see if closing was profitable
6. **Never said he was sorry – no remorse**
 - (a) His laughter – showed the opposite

7. **Refused to give a straight answer** to even his position in the company

F. Dermott O'Flanagan - President

- Exh. 76**
1. Never came to testify
 2. Knew that the PCBs were to be used to *enhance the quality of life* – Press Release – **Exh. 76**
 3. **He approved the surcharge** – Howard's undisputed testimony

(9)

G. John Alstadt (Accountant)

1. An accountant's **tool of his trade are numbers** – he offered no new numbers
 - (a) A carpenter without a hammer;
 - (b) A plumber without a wrench; or
 - (c) A surgeon without a scalpel
2. **Because people on salary we could not be reimbursed for their time to transition to Porterville.**
3. If our numbers really were overstated . . .
 - (a) He would have said by **how much**
 - (b) He would have **had his own numbers**

H. Julie Putnam - Planner

1. Claimed to be **in charge of all aspects** of the Beckman Coulter account – *even drove the truck*
2. Said she had a **verbal agreement with Julie Conti** on January 4, 1999
 - A. *Surcharge* based on carrying costs for \$471,000 of inventory

B. Julie Conti adamantly denied it

- C. Exhibit 193A from Donna Catone on January 4, 1999 was the basis for the 1999 blanket order P.O.
3. This new interpretation of the surcharge **never discussed in Opening Statement** or for two months in trial

I. Clarence Neal - No involvement

1. **Flex picked a likeable guy to attempt to deflect punishment for their wrongs**
2. **Admitted that no one gave any consideration** to the impact upon Beckman Coulter when closing the facility
3. Not a *hold* on lifetime buys – it was a *non-release*
4. **Refused to admit Beckman not treated fairly**

J. Matt Ryan

1. Motorola \$30 B not largest contract

Screen
10-11-12

2. Admitted knowing that Life Time Buys would be held hostage
3. *He felt comfortable telling the jury that he would have reopened the doors and rehired the employees if asked within 45 days*
4. **He would have acted differently if he knew he would face a judgment for millions.**
 - A. The *Almighty Dollar* is all he cared about

2. Beckman Witnesses

A. Julie Conti

1. **Top secret government clearance – manufacturing missiles for Raytheon**
2. Not employed by Beckman – nothing to gain
3. Clearly established:
 - (a) 12 months to select
 - (b) 10 months to validate
 - (c) **No choice** but to agree to surcharge
 - (i) Felt Howard would cut off PCBs
 - (ii) Surcharge was **agreed under**
4. Denied 1-4-99 agreement with Julie Putnam

duress

B. Kirti Shah

1. Masters in Electronics
2. With Beckman since 1984
3. Specializes in FDA validations
4. **Validated as fast as he could** because he wanted to get the LX20 to market

- (a) Would have taken 10 months to validate elsewhere

C. Dan Nelson

- 1. In charge of Production
- 2. With Beckman since 1982
- 3. Outsourced PCBs because not B&C's "*core competency*"
- 4. Was told by Terry Zale:
 - (a) Contract terminated 2 ½ years early
 - (i) 90 days' notice
 - (b) Holding LTB hostage
 - (c) You're on C.O.D.

D. Marshall Black

- 1. In charge of Manufacturing in Porterville
- 2. Been with Beckman since 1973
- 3. Utilized all departments of Porterville
- 4. Would **cost more to repack** the excess inventory than its value
- 5. "*Days blended into weeks, weeks into months*"
- 6. Otherwise damages would have been "*cataclysmic*"

E. Ed Vivanco

1. Senior V.P. – Past President of Beckman Coulter
2. With Beckman Coulter for 32 years
3. Here nearly **every day**
 - (a) As opposed to **McNamara** who we all had to **accommodate by staying late**

4. Identified **what Beckman Coulter stands for**

- (a) **Quality** in medical care
- (b) *“Do The Right Thing”*
- (c) Explain to mother why child died in ER.

**Exh. 808
(13)**

5. **Made the reasonable good faith decision to return to Porterville to avert disaster**

6. **Confirmed what Dr. Zakowski** (a 20 year employee) said about the **reputation** of B & C stemming from 1935

F. Terri Johnson

1. Replaced Julie Conti
2. Dealt with Donna Catone and Terry Zale in Summer of 2000
 - (a) Was told **she could not get Lifetime Buys** unless she bought the excess – Hostage

Screen 3. EXH. 857 *Life Time Buy Hold*
(14)

V. **SURCHARGE - ECONOMIC DURESS**

1. **Contract for Fixed Amount**

A. *Turnkey Contract*

1. **Administration fees included** – McNamara, Donna Catone, Julie Conti, Lance Castro

EXH. B. Contract Paragraph 11A – *All prices listed on Exhibit A*
96 ¶ 11A *shall be good until at least December 31, 1998*

(15)

EXH. A Exh A - *Prices good from December '97*
(16) *through December 31, 1998*

¶ 11B C. *Prices fixed for one year* – Contract, para. 11B
(17)

D. *Custom in the industry* – Prices fixed for one year

1. Testimony of Julie Conti, Lance Castro, and Donna Catone and Steve Howard

Screen E. *Testimony – agreed prices were fixed*
18-19-20

1. Julie Conti, Lance Castro and Donna Catone

F. **Prices can change only if:**

1. An Engineering Change Order – Not
2. Change in *cost of raw materials* *outside the control of the parties*

- (a) PPV not outside control of parties,
bought product from Beckman
- (b) PPV, carrying costs and admin. fees are not
“*cost of materials*”

2. Prices were changed within one year and before December 31, 1998

**EXH
184
(21)**

A. Exh. 184 - August 31, 1998 Agreement

3. Wrongful Imposition of Surcharge - No Other Choice

**Screen
22**

A. *With Gun in Hand*

- 1. Testimony of Julie Conti, Donna Catone, Greg Cruz and Steve Howard

B. Beckman had **no other choice** but to agree to surcharge

**Screen
23-24**

- 1. Julie Conti said it was “*preposterous*” – “*unfair*”

**Screen
25**

- 2. Testimony of Donna Catone

**Screen
26-27**

- 3. Testimony of Greg Cruz

C. **Steve Howard threatened to discontinue the manufacture of PCBs on 8/31/98**

- 1. Testimony of Julie Conti, Donna Catone and Steve Howard

- 2. Testimony of Greg Cruz

D. Knew that PCBs went in medical instruments

- 1. Press Release (Ex. 76)

- E. Beckman had **no other supplier** then available
 - 1. Testimony of Julie Conti, Donna Catone, Steve Howard and Lance Castro

- F. Beckman had **just invested 10 months** validating the Dovatron PCB production and **could not go elsewhere**
 - 1. Testimony of Julie Conti and Donna Catone

- G. Potential Harm
 - 1. No Replacement Boards - risk to public H&S
 - 2. 1 year loss of profit \$135 M
 - 3. Damage to reputation - *Flagship*

4. Beckman Relied on Donna Catone to Track the Surcharge

- A. Demand came **from Production Floor** – not Conti
- B. **Invoices mailed** to Fullerton, not Brea – (Ex. 96, para. 12B, and Ex. 651)
- C. **Catone knew how many were shipped daily**

EXH. 92 (28) 1. **E-mail** from Donna Catone, **tracking the balance** of surcharge on October 29, 1998 (**Exh. 92**)

EXH. 193A (29) 2. **E-mail from Donna Catone on 1/4/99** – **Exh. 193A**
 (a) Also disproves Julie Putnam defense

D. Julie Conti trusted Donna Catone

Screen 30-31 1. Donna Catone Testimony

- E. Testimony of Julie Conti, Donna Catone and Lance Castro
5. **Dermott O’Flanagan Knew and Approved the Surcharge**

Screen
32

- A. Undisputed **trial testimony of Steve Howard**

VI. CONCEALMENT OF OVERCHARGE ON SURCHARGE

1. Testimony of Donna Catone
 2. She kept track and **told Howard of overcharge**
 - A. *“My boss told me to lie”*
 - (1) Fired Ed Alluis and Mark Dunham (Christmas)
 - B. *“I would have taken this secret to the grave”*
 - C. Catone left the rest of her file with Zale
 - (1) Flextronics did not turn over file
 3. Lance Castro
 - A. Knew of overcharge - *“Pestered Howard”*
 4. **Lied About \$800,000 Surcharge**
 - A. Steve Howard does not have **ESP**
 - B. *Gun in hand was pointed at him*
 - C. **Marshall Black sent \$471,000 in December, 1998**

EXH. 764b
(33-34)

1. Exh. 764(b) – 12/21/98 invoice

(2 pages)

2. \$309K was LTB
- D. The **inventory was good**, not useless – contained \$309K of lifetime buys – **Exh. 764(b)**

5. **Donna Catone and Steve Howard tracked its usage**

**EXH. 189-3
(35)**

- A. **Exh. 189-3 – Howard’s handwriting**
- B. Documents *lost* by Flextronics - **Jury Instruction**

6. Catone told to keep charging and keep quiet

- A. **Instructed to lie** or lose her job
- B. **Catone confessed** under oath

**Screen
36**

7. Skorheim calculated the overcharge of \$355,212

VII. BREACH OF CONTRACT

**EXH.
16A
(37)**

1. **Five Year Term** – November 1, 1997 to October 31, 2002

- A. Exhibit “96” ¶16A
- B. Testimony of all witnesses

2. **Unilateral breach of contract** – May 30, 2000

- A. **Telephone call** on May 30, 2000

**Screen
38-39**

1. **Zale lied about remembering the call.**

Screen 40

2. Dan Nelson remembered

(a) Said "*We have a 5 yr. contract – breach*"

**EXH.
275
(41)**

**B. May 30, 2000 repudiation letter from Terry Zale -
Exh. 275**

**Screen
42-43**

1. Zale admits breach

(a) Decision was final

**Screen
44-45**

(b) Reconsideration **futile**

**2. Total indifference or disregard of risk to public
health and safety**

C. Testimony of Dan Nelson and Terry Zale

3. Refused to transfer to San Jose

**A. Dan Nelson asked for more time and a transfer to
San Jose.**

**Screen
46**

B. Terry Zale – “*Only two alternatives*”

EXH. 783

**C. Announced \$30 Billion cell phone deal next (47)
day**

1. Would use “*all of Flextronics’ capabilities*”

**4. Only reasonable alternative to return production to
Porterville**

**A. Testimony of Marshall Black, Dan Nelson, Kirti
Shah, Lee Pulver and Ed Vivanco**

B. Could not validate in 90 days elsewhere

1. Contract awarded on 9/8/97 (Exh. 78)
2. Validation completed 8/20/98 (Exh. 93)

C. Porterville previously built the PCBs

D. Communication system with Brea in place

1. Bill of materials
2. Knowledge of part numbering system

E. Porterville had product knowledge

F. Knew all sources for components

1. Had pricing in place

G. Had component *stores* in Porterville

1. Could avoid lead times

H. Had existing SMT line

I. Previously **approved by FDA**

J. Porterville **willing to do whatever it took – urgency**

1. *Days flowed into weeks, and then into months*

5. No evidence that any other contractor could do it

6. Possible harm make actions even more reasonable

Screen (48-49-50-51)

A. Ed Vivanco would be down for 1 year - no other supplier

1. \$135 million

B. Even if other supplier immediately available, still 10 months to validate

1. Testimony of Kirti Shah, Lee Pulver, Dan Nelson and Marshall Black

2. Seven (7) months **without replacement PCBs for hospitals**

(a) *Threat to public health and safety*

3. Damage to **reputation**

4. **Loss of sales** of LX20s, re-agents and consummables

**Skorheim
Power Point
#2
(52)**

(a) Potential loss of \$45 million (4 months)

5. *Totally unacceptable – Flagship*

VIII. FLEXTRONICS' ACTS OF OPPRESSION AFTER CONTRACT TERMINATION

1. Held lifetime buys hostage

Screen 53

A. *“From the lips of Terry Zale”* – Donna Catone

1. Terry Zale, Michael McNamara and Matt Ryan **cared only about money** – not the public's health and safety

B. *Flextronics worships at the altar of the Almighty Dollar*

1. Clarence Neal – No one cared about the impact on Beckman

C. Clarence Neal - LTB not *Hold* but *Non-Release*

EXH. 279 D. August 10, 2000 Terry Johnson e-mail (Exh. (54) 279)

1. “*As Dovatron will not release our LTB. .*”

EXH. 857 (55) 2. Holding Life Time Buys – **none needed by Flex**

EXH. 281 (56) E. September 13, 2000 letter from Terry Zale “*All or nothing*” or “*We Will destroy*” (Exh. 281)

1. **Catone and Zale admitted Flextronics had no use for the parts**

2. Zale “*Will Destroy*”

(a) Zale only cared about money

3. Again everyone had a total disregard for the risk to public’s health and safety

2. Other Components Useless to Beckman

EXH. 280 (57) A. **Marshall Black** – Dovatron used a different feeder and **had to be repackaged** so parts were unusable, i.e., “junk”

1. Cost in time to repackaged exceeded value of the parts

2. 8/25/00 e-mail - Exh. 280
3. Even Clarence Neal admitted the **Parts had to be repackaged**

B. **Nelson** "*Wanted us to buy components used by other customers.*"

EXH. 3. Beckman wired \$143,452.66 on September 14, 2002
205
(58)

EXH. 871 A. Zale reneged and kept the last LTB until
(59) September
27, to negotiate away the warranty claims

SCREEN 59a B. Sternad and Callanan said warranty exposure was
\$900K

4. Placed Beckman Coulter on COD on August 31, 2000

EXH. 627 A. Request for reimbursement August 31, 1998 –
(60) Exh. 627

1. Sought an "*amicable*" solution

B. Counter was \$0.00 and C.O.D.

1. Two e-mails from Zale on August 31, 2000
– Exh. 628 and 629

2. September 1, 2000 letter from Dan Nelson –
Exh. 750

C. Tried to force Nelson to sign a Termination and
Release Agreement

EXH. 863 D. Beckman **current on all payments**

(61)

1. Nelson "*Extremely upsetting*"
 2. Zale 8/17/00 e-mail "*Accounts Payable – Normal*"
- E. Flextronics only cared about money
1. Total disregard for potential impact on public's health and safety
- F. Testimony of Dan Nelson and Terry Zale

3. **Oppressive Conduct Characteristic of Flextronics**

- Screen 62-63 A. Michael **McNamara laughed** - *He would have charged more*
1. Zale was "*generous*"
- Screen 64-65-66 B. Matt Ryan admitted approving the tactic of holding the LTB hostage
- C. Terry Zale "*possessed the business characteristics desired by Flextronics*"
1. **Zale given promotion** for way he closed Anaheim
- Screen 67-68-69-70-71 D. McNamara closed the facility with a **total disregard of the impact** upon Beckman Coulter and its customers
1. *Proves Ryan knew and approved for Punitive damages*
- Screen 72-73 E. **McNamara never looked back** to see the impact upon Beckman Coulter and the hospitals

1. Only looked back to see if closure of Anaheim was profitable

IX. DAMAGES

BIG BOARD 1. **1998 Economic Duress** - \$300,000 + \$355,212 overcharge = \$655,212

2. **Concealment of Overcharge** - \$355,000

3. **2000 Economic Duress - Excess inventory** purchased when LTB Hostage

EXH. 860 A. August 28, 2000 e-mail - **first buy** - **\$26,149.47** (EXH. 860 860)

(74)

1. Second buy - **\$8,552.31** (EXH. 860)

EXH. 864 B. September 1, 2000, **Discrepancies in inventory ignored** **\$20,110.68** (EXH. 864)

(75-76)

EXH. 205, C. Tom Sternad wired money for inventory after 9/13/00 "*As is all or nothing*" **\$143,452.66**

P. 71

(77)

EXH. 871 1. For Excess because all LTB received except one by (78) September 6, 2000

2. Last LTB of \$39K trade for warranty release on 9/27/00 (EXH 863)

Total Excess and Discrepancy bought under duress:
\$198,265.12

Skorheim

#4 4. **Cost to Cover** – \$2,144,785

(80)

A. Legal term – not business term

B. Cost to cover **calculated the same as the Standard Unit Cost**

1. **Standard Unit Cost includes all expenses** to make product
2. Testimony of **Steve Howard**, Marshall Black, Tom Sternad and Jim Skorheim

C. **Tracked all time and expenses**

1. Dan Nelson, Marshall Black, Tom Sternad

D. **Purchased equipment** from Flextronics and Others

1. Deducted depreciation and remaining FMV
2. Marshall Black, Dan Nelson, Tom Sternad and Jim Skorheim

E. \$2,144,000 – cost to cover includes carrying cost and labor

1. Previously part of Interrogatory Response No. 21
 - (a) \$1,953,000 not \$1.3 million
2. Less than 5% off from 8/31/00 estimate of \$2,249,0000

F. **John Alstadt – Accountant with no numbers**

1. Numbers are tool of his trade
2. If he really disputed our numbers he would have his own

Screen

X. WALDRON'S PROMISE IN OPENING STATEMENT

81

1. Beckman had already decided to return production to Porterville - NOT

A. *Decision to outsource* at highest level

1. Not *core competency*

B. No steps taken to return to Porterville prior to May 30, 2000

**EXH. 601
(82)**

1. Marshall Black "*Had no component inventory prior to May 30, 2000*"

C. Tried to sell Porterville to Dovatron

1. "*To solidify partnership*"

2. We could have moved to San Jose - NOT

A. Terry Zale *only two alternatives (video)*

**EXH. 275
(83)**

B. May 30, 2000 letter

1. "*Disengagement plan*"

2. "*Transition to a new contract manufacturing partner*"

Screen 84

C. *“Switching from small unit to large unit production”* Interrogatory No. 7

D. \$30 billion contract next day – Used *“all capacity”*

3. *“It didn’t take 10 months to validate, only 3, and nobody from Beckman ever came to Dovatron during the validation period”*

Screen 85

A. *Waldron’s Statement*

B. Kirti Shah – 10 months

1. SMT Validation Plan Revisions commencing 11/17/97 – **EXH. 120, 121, 122, 123, 124 and 125**

2. Weekly Memoranda and Action Items
EXH. 137-158

3. Validation Certificate 8/24/98

4. **Surcharge was really for \$800,000 - NOT**

Screen A. 86

Waldron Statement

B. Howard does not have **ESP**

C. Exhibit “764B” – Beckman \$471,000 invoice dated December 21, 1998 - 4 months later

5. **\$471,000.00 inventory was useless - NOT**

Screen

A. *Waldron’s statement: The \$491,000 was junk*

87

B. \$309K was LTB – not junk

**EXH.
189-3
(88)**

C. Howard tracked its use – Exh. 189-3

D. Why would Marshall Black sell junk to its new partner?

E. Catone said “it was good and they used it”

F. Mr. Waldron’s opening incorporated the big lie

6. Settled all issues in 2000 with the purchase of some equipment at a discount - NOT

**Screen
89**

A. *Waldron's Statement*

B. No evidence of an equipment discount rather FMV

C. Ignores request for \$2.249M, payment \$0 and COD

D. Nelson refused to sign Release Agreement

1. *“Extortion – Won't stand up in Court”*

7. Howard engaged in a conspiracy to manipulate the prices to help Cruz and Conti

A. The \$471,000 inventory was not useless

1. If it was useless – **Porterville’s problem**

B. **Conti broadcast the \$300K** by change order – Exh. 185

C. Howard and Cruz – *“Man to man”*

1. Howard told Catone everything – **no secret deal**

8. Surcharge was for forecasts that were too high

- A. If forecasts were high - why were they always on back order

1. Putnam always short on delivery

- B. *Forecasts only Advisory* - Contract ¶5b

- C. No minimum required order - Contract ¶3

- EXH. 88 (90)** D. Cruz November 1997 “*authorized to forecast, plan and order for Beckman*”

1. 10th largest Electronic Component

Manufacturer

9. Did not check with Other Contractors

- A. **Spoke with K-Tech** – Dan Nelson

1. K-Tech did not have proper HP 3070 test equipment

- B. Was **contacted by other suppliers, including Steve Howard**

- C. **Not enough time** to transfer to other contractors

- D. No other contractor would have the same **sense of urgency**

- E. **No evidence that any other contractor could do**

it!

10. Cost to Cover Changed from \$1.3 million to \$2.1 million

A. Separately identified the carrying costs and labor in the same answer to Interrogatory No. 21 = \$1,953,000 as *Cost to Cover* –

1. Change less than \$200,000

B. Original estimate on 8/31/00 was \$2,249,000

1. Off by less than 5%

Sp. #6

C. Effort only need be reasonable and Flextronics can not complain

(91)

XI. NEW DEFENSES DURING TRIAL

1. Failed to Give Notice of Breach and Opportunity to Cure

A. Zale lied about the phone call

B. Nelson told Zale it was a breach

**Screen
92-93**

C. Zale admitted decision was **final**

1. Any further request would be **futile**

**Sp.#4
(94)**

D. Jury instruction re repudiation contract

2. Nelson's agreement to pay some carrying cost in 2000 = Conti would have agreed in 1998

A. **Ignores** uncontradicted testimony of Conti and Catone of duress in 1998

3. **Putnam “Surcharge was agreed in January 1999”**

A. 1/4/99 blanket P.O. for the year

**EXH.
193A
(95)**

1. Followed Catone’s status e-mail of 1-4-99

B. Ignores Conti and Catone testimony of August 31, 1998 agreement

1. Conti denied Putnam’s claim

2. *Putnam refused to look up at Conti*

C. **Never mentioned** for two months or in discovery

1. Waldron’s opening - \$800K lie

**Screen
97-98**

2. Waldron’s examination of Howard elicited testimon on \$800K

D. Purpose to pay carrying cost on \$471,000

1. Even at 27% with the declining amount only \$70K not \$355K

4. **Flextronics only withheld the LTB inventory needed to complete build for us**

**Screen
99**

A. Zale lied - said the components needed to complete build

**EXH. 857
(100)**

B. EXH. 857 – shows Flextronics had no need for parts

Screen

C. Catone – *From the lips of Terry Zale – “Hold the Life Time*

(101) *Buys Hostage"*

- D. Matt Ryan **knew and approved** holding the LTB
 hostage

- E. The Board won't work if one component missing
 - 1. LX20 won't work if it is missing one Board

 - 2. Even a \$1.00 part can cost millions in damages

- F. We didn't get our last LTB until October – only in
 exchange for a release of warranty claims

EXH.
871
(102)

XII. PUNITIVE DAMAGES

1. Howard, Zale and Ryan lied
2. **McNamara laughed**
 - A. Praised Zale's ruthless conduct
3. Matt Ryan *felt comfortable* lying to this jury
4. Howard, Zale and McNamara **all knew that the PCBs were needed as replacements in hospitals**
 - A. **Neal said** everyone had total disregard for the risk to **Beckman, hospitals or H&S**
 - B. Repeatedly threatened to cut off the supply of PCBs
 1. August 31, 1998 – Howard's imposition of surcharge
 - (a) O'Flanagan knew PCBs would *advance health care in America (Exh . 76)*
 - (b) Dermott O'Flanagan approved the imposition of the surcharge
 - C. Zale held the **lifetime buys hostage**
 - D. **Zale refused to turn over inventory unless C.O.D.** on August 31, 2000
 1. Paid all \$22M timely
 - E. McNamara and Zale gave **90 days' notice** - unilateral
 1. Total **disregard for the impact** on Beckman and its hospitals

- (a) Replacements for Hospitals
 - (b) \$135 M
 - (c) Reputation
- 5. **McNamara never looked back** at the condition of Beckman – only to see if the factory closing was profitable
- 6. **Flextronics first adopted Howard’s lie** as its position and now Putnam’s lie
 - A. Now adopts Putnam’s lie
 - B. **Entire defense was a lie and an attempt to deceive and mislead**
- 7. **Flextronics worships at the Altar of the Almighty Dollar**
 - A. **Only concerned about money**
 - B. Knowingly breached its contract to accept **Motorola’s \$30 billion deal the next day**
 - 1. Despite potential harm to the public’s health and safety
 - 2. Despite Beckman’s being a good partner
- 8. **Flextronics didn’t even care about this trial**
 - A. McNamara flew in and we had to accommodate his schedule
 - 1. Needed to accommodate Zale as well
 - 2. Ed Vivanco here every day

B. Flextronics showed “no remorse”

1. No apology for what it put Beckman through
2. Sought to **hide behind the kind demeanor of Clarence Neal**

9. McNamara laughed at the risk to hospitals and patients in E.R.

A. *Health and safety of the public - basis for punitives*

**Sp. #19
(103)**

B. Beckman’s corporate philosophy saved the public from harm

1. *Do The Right Thing and Advance Quality*

C. Flextronics’ pursuit of money almost robbed the public of this kind of company

10. Flextronics didn’t care that it nearly put Beckman out of business

A. Could have cost it \$135,000,000 in 1998 alone

B. Permanently damage its reputation

**Sp. #18 11. Punitive damages can be based on potential harm
(103a)**

Screen 103b A. Must be *1 to 5%* to be material

Screen 103c B. Materiality Chart

Screen 104 C. **Flextronics arrogantly declares it can pay any punitive damage award allowed by law**

- D. Verdict allows four times the amount of “**potential harm**”

**Verdict
(106)**

1. Show Verdict ¶9-10

12. The only thing Flextronics understands is money

- A. Matt Ryan said **he would have acted differently** if he knew he would face a judgment for millions.
- B. Purpose is **to punish and deter**
- C. Only punitives will deter in the future.
- D. Large companies from around the world are watching

13. If the Defendant had \$100.00, and punishment was \$1.00 or 1%

- A. Waldron will probably suggest only \$2 million - 5 cents
- B. Would that serve the purpose of punishment and deterrence?
- C. 1% for Flextronics is \$45,000,000

If the Defendant had \$100.00 and the punishment was \$.10

- A. Defendant left with \$99.90

- B. For Flextronics that would be \$4,500,000
- C. Would that adequately punish or deter?

14. Send a message to Singapore

- A. So that the corporate executives will learn of this case
- B. So the **shareholders will be notified** of this case
- C. So this conduct is justly punished
 - 1. Future wrongs are deterred
- D. Show that Beckman's corporate philosophy is to be rewarded and not that of Flextronics

15. B&C was there to throw a safety net to protect the public

- A. Not likely B&C or any company as resourceful will be there next time when Flex or someone else puts the public's health and safety in jeopardy
- B. *Only you can protect the public from future harm*