

How Ross Aronstam Got \$85M For Biz In Busted Deal Case

By **Rose Krebs**

Law360 (April 29, 2022, 4:58 PM EDT) -- Attorneys for Ross Aronstam & Moritz LLP said their work securing \$85 million for chemical manufacturer Venator Materials PLC in Delaware Superior Court litigation with Tronox over the sale of production facilities in Ohio involved more than just the standard busted deal case issues.

Following an eight-day jury trial in the Superior Court's Complex Commercial Litigation Division, the Delaware firm secured a judgment earlier this month in favor of Venator, both on the company's claims for a \$75 million "break fee" and in its defense of an up to \$400 million counterclaim filed by chemical giant Tronox, the firm announced.

"Unlike many busted deal cases, this one involved claims arising from a preliminary agreement to negotiate a final agreement, which made the conduct in negotiations a key focus," Ross Aronstam partner S. Michael Sirkin told Law360 Pulse in an email. "As a result, the chief executive officers and general counsel of both public companies were key witnesses in the case."

The litigation "involved dueling claims for breach of contract arising out of an agreement concerning the potential sale of a titanium dioxide facility in the United States [the Ohio facilities] for \$1.1 billion," the firm's announcement said.

Sirkin said that the court's "big-picture takeaway ... was that this was a case of 'seller's remorse,' rather than the buyer's remorse narrative that emerges from most busted deal litigation."

Superior Court Judge Eric M. Davis, following the filing of Venator's motion for judgment as a matter of law, ruled that Tronox had not proven its breach of contract counterclaim or its defenses in the case. Then, after conferring with both sides, he dismissed the jury and entered a \$75 million judgment in favor of Venator, according to a trial transcript.

"What you can't do is you can't say they repudiated the memorandum of understanding [related to the transaction], and, therefore, they're not entitled to the break fee," Judge Davis said during proceedings, according to the transcript. "Because there's no evidence that they repudiated it. None."

After some back-and-forth, Tronox's attorney Glen Silverstein of Leader Berkon Colao & Silverstein LLP told the judge on April 6 that he believed there was "no reason to go to the jury and judgment should be entered" on the \$75 million Venator sought, according to the transcript. Tronox would then be able to appeal the decision if it wanted, Silverstein said.

"We are thrilled with the decision, which is a complete vindication of Venator's actions," Ross Aronstam partner David E. Ross told Law360 Pulse in an email on Thursday. "As the judge emphasized in his decision, there was simply no evidence of any wrongdoing by Venator."

"Indeed, it was the complete absence of evidence of wrongdoing by Venator that caused the court to take the unusual step of granting Venator judgment as a matter of law on both Tronox's counterclaim and Venator's claim," Ross added.

Tronox ended up not filing an appeal, and on Monday, counsel for Venator and Tronox filed a stipulation of dismissal to the court.

Also on Monday, the UK-based Venator announced "that it received \$85 million in cash from Tronox pursuant to its settlement agreement with Tronox" with the additional value "representing a negotiated amount of interest."

The agreement "resolves all legal disputes between the parties contested in the Superior Court of Delaware," the announcement said.

Silverstein told Law360 Pulse on Friday that his counterparts at Ross Aronstam "did a very good job" litigating the case.

"It was a well-tryed case by everyone involved," Silverstein said.

"We disagree with Judge Davis' ruling but decided to resolve the matter and move forward," he added. "We were looking forward to hearing from the jury, but again, we decided to move forward."

Venator's suit, filed in 2019, sought to recover the \$75 million break fee Venator asserted it was owed under the terms of a 2018 agreement with Tronox that was tied to the chemical company's efforts to purchase Cristal, another chemical company, according to a court filing.

As it sought to close on its acquisition of Cristal, European Union antitrust regulators said they would require Tronox to sell its paper laminates business to a buyer they approved in order to get clearance for the Cristal merger, Venator said in a filing.

"The only buyer Tronox could find to meet the EC [European Commission]'s requirements was Venator," the filing said. "Venator did not particularly want to buy the laminates business. But Venator coveted Cristal's two side-by-side titanium dioxide production facilities in Ashtabula, Ohio."

Faced with regulatory pressure in the U.S. that also threatened to thwart its Cristal acquisition, Tronox struck agreements in July 2018 to sell its laminates business to Venator and negotiate a potential sale of the Ohio facilities to Venator as well, the filing said.

Venator argued that certain conditions were met that put Tronox on the hook for the \$75 million break fee after the Ohio facilities weren't sold to Venator.

However, Tronox had argued that Venator "breached its obligation to use its 'best efforts' in negotiating" a final deal for the facilities and countersued, asserting in a court filing that it was forced to sell the Ohio facilities "to an alternative buyer for \$700 million," well below the \$1.1 billion purchase

price set forth in the agreement with Venator.

Tronox countersued for \$200 million to \$400 million in damages since it ended up selling those facilities for less than it would have to Venator if that deal had been finalized.

Ross said that "a key component" of Venator's counsel team's trial strategy "was to show that Venator had nothing to hide."

"We did this in two ways. First, we called Tronox's senior executives as hostile witnesses in our case, in order to take its claims on directly and expose their shortcomings," Ross said. "In fact, our first witness was Tronox's CEO at the time. In addition, we had our witnesses discuss in their direct examinations what we expected would be Tronox's favorite documents, to show that they supported Venator's position, not Tronox's."

Witnesses at trial included the senior executives from both companies, general counsel from both companies, and two former directors of the Federal Trade Commission's Bureau of Competition, Ross Aronstam said in the announcement.

Sirkin said another aspect that made the case not just a run-of-the-mill busted deal dispute was that "the contract arose from a merger (between Tronox and Cristal) that was being reviewed by the Federal Trade Commission," and thus, "any final agreement between Venator and Tronox would have been reviewed by the FTC."

That factor led to the trial featuring expert witness testimony from the two former FTC Bureau of Competition directors, who "provided insight into the regulatory process and opined on the likelihood that any agreement would have been approved by the FTC," Sirkin said.

Venator is represented by David E. Ross, Garrett B. Moritz, S. Michael Sirkin, Adam D. Gold, S. Reiko Rogozen, Anthony M. Calvano and Holly E. Newell of Ross Aronstam & Moritz LLP.

Tronox is represented by Glen Silverstein, Michael J. Tiffany, Daniel A. Johnson and Stephanie L. Gase of Leader Berkon Colao & Silverstein LLP and David Soldo of Morris James LLP.

The case is Venator Materials PLC v. Tronox Ltd., case N19C-05-117, in the Superior Court of the State of Delaware.

--Editing by Jay Jackson Jr.