



And The Defense Wins

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DRI members [C. Dewayne Lonas](#) and [Matthew J. Hundley](#) of **Moran Reeves & Conn PC** in Richmond, Virginia, successfully defended Eckert & Ziegler Nuclitec GmbH (“EZN”) in an \$8 million breach of contract suit in the U.S. District Court for the Eastern District of Virginia. EZN, in fact, won twice in this lawsuit—first, when the district court granted summary judgment on all of plaintiffs’ claims, and later, when the district court awarded it \$617,627.69 in attorneys’ fees and costs as the prevailing party.

The lawsuit arose from a settlement agreement reached in prior litigation between the plaintiffs Best Medical International, Inc. and Best Vascular, Inc. (collectively, “Best”) and EZN’s predecessor-in-interest. The settlement agreement required Best to decontaminate and decommission a production line housed in a manufacturing plant in Braunschweig, Germany, used to manufacture sealed sources incorporating the radioactive Strontium-90 isotope. The production line had been shut down in 2005 because there was no longer any market for the sealed sources the line had been built to manufacture.

The settlement agreement gave Best a year and four months to complete the decommissioning of the plant; thereafter, EZN had the right to take control of the work and assess the costs to Best. After nearly two years elapsed with virtually no progress by Best, EZN took over the project and began disposing of the plant as radioactive waste, in accordance with German law.

Best sued EZN to prevent the cleanup. Best initially moved for a temporary restraining order and requested a preliminary injunction, both of which the district court denied. Best then pursued a permanent injunction against EZN and over \$8 million in damages under theories of breach of contract and “equitable estoppel.” EZN filed a compulsory counterclaim to recover its cleanup costs and its damages for loss of use. On September 7, 2011, the district court found Best in default of the settlement agreement, granted EZN’s motion for summary judgment and dismissed all of Best’s claims. The court also dismissed EZN’s compulsory counterclaim, finding that EZN could pursue its cleanup costs in arbitration.

Both parties submitted fee petitions claiming to be the prevailing party under the settlement agreement. EZN sought only its attorneys’ fees and costs related to its successful defense of the action brought by Best, and submitted expert testimony as to the reasonableness of its hours and rates.

On January 6, 2012, the district court held that EZN was the prevailing party and awarded it \$584,735.08 in fees and \$32,892.61 in costs, precisely the amounts sought by EZN in its fee petition. The district court denied Best's fee petition.

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