

F I L E D

Clerk of the Superior Court

JUL - 6 2012

By: L. SAN NICOLAS, Deputy

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**SUPERIOR COURT OF CALIFORNIA
IN AND FOR COUNTY OF SAN DIEGO**

PAUL BANKS,

Plaintiff,

v.

GENERAL ATOMICS, a California
Corporation, and GENERAL ATOMICS
AERONAUTICAL SYSTEMS, INC., a
Delaware Corporation,

Defendants.

CASE NO. 37-2009-00084081-CU-BC-CTL

Hon. William S. Dato
Dept. C-67

JUDGMENT

GENERAL ATOMICS,

Cross-Complainant,

v.

PAUL BANKS, an individual, and
TETRAVUE, INC., a California
corporation,

Cross-Defendants.

This action came on regularly for trial commencing on October 6, 2011, the Honorable William S. Dato presiding. Plaintiff PAUL BANKS was represented by Thomas Tosdal, Jon Vanderpool, and Georgiana D'Alessandro of Tosdal, Smith, Steiner & Wax. Defendants and Cross-Complainant GENERAL ATOMICS ("GA") and GENERAL ATOMICS AERONAUTICAL SYSTEMS, INC. ("ASI") were represented by Jason Halper, James Bailey, Ryan Andreoli, and Lambrina Mathews of Cadwalader, Wickersham & Taft, Aaron Dyer of

1 Pillsbury, Winthrop, Shaw, Pittman, and Richard Paul and Karin Sherr of Paul, Plevin, Sullivan,
2 & Connaughton. Cross-Defendants PAUL BANKS and TETRAVUE, INC. were represented
3 by James Sarnecky and Michael Lindsey of Gavrilovich, Dodd & Lindsey, and Neil Greenstein
4 of TechMark.

5 By order of the Court, trial was bifurcated as to liability and compensatory damages in
6 one phase, punitive damages in a second phase, and ancillary equitable claims tried by the Court
7 following the jury's verdicts.

8 A jury panel was examined by the Court and counsel October 11 and a jury of twelve
9 persons with three alternates was impaneled and sworn on October 12, 2011.

10 Opening statements were delivered and the presentation of evidence began on October
11 17, 2011. Witnesses testified and evidence was admitted during ensuing trial proceedings
12 through November 16, 2011. After being instructed by the Court on the law on November 17,
13 closing arguments were delivered and the jury commenced deliberations late that afternoon. On
14 November 22, 2011, the jury returned verdicts on the two phase one special verdicts as follows:

15 **CONTRACT/FRAUD CLAIMS**

16 **CONTRACT CLAIM**

17 ***A. Breach of Contract***

18 1. Did Paul Banks and General Atomics enter into a contract?

19 Yes No

20 If you answered Question 1 "yes", go to Question 2. If you answered Question 1 "no", go to
21 Question 10.

22 2. Were the contract terms clear enough so that the parties could understand what
23 each was required to do?

24 Yes No

25 If you answered Question 2 "yes", go to Question 3. If you answered Question 2 "no", go to
26 Question 10.

27 3. Did the parties agree to give each other something of value?

28 Yes No

1 If you answered Question 3 “yes”, go to Question 4. If you answered Question 3 “no”, go to
2 Question 10.

3 4. Did the parties agree to all the essential terms of the contract?

4 Yes No

5 If you answered Question 4 “yes”, go to Question 5. If you answered Question 4 “no”, go to
6 Question 10.

7 5. Did Paul Banks do all, or substantially all, of the significant things that the
8 contract required him to do?

9 Yes No

10 If you answered Question 5 “yes”, go to Question 6. If you answered Question 5 “no”, go to
11 Question 10.

12 6. Did General Atomics fail to do something that the contract required it to do?

13 Yes No

14 If you answered Question 6 “yes”, go to Question 7. If you answered Question 6 “no”, go to
15 Question 10.

16 7. Was Paul Banks harmed by that failure?

17 Yes No

18 If you answered Question 7 “yes”, go to Question 8. If you answered Question 7 “no”, go to
19 Question 10.

20 ***B. Statute of Limitations***

21 8. Before February 25, 2007, did Paul Banks discover or could he have discovered
22 through reasonable diligence that GA breached the contract?

23 Yes No

24 If you answered Question 8 “yes”, go to Question 10. If you answered Question 8 “no”, go to
25 Question 9.

26 ***C. Damages***

27 9. What are Paul Banks’ damages for his breach of contract claim?

28 \$6,000,000

1 Go to Question 10.

2 **FALSE PROMISE CLAIM**

3 ***A. False Promise***

4 10. Did General Atomics make a promise to Paul Banks regarding an ownership or
5 “equity” interest in the Photonics division that it did not perform?

6 Yes No

7 If you answered Question 10 “yes”, go to Question 11. If you answered Question 10 “no”,
8 please sign and date this verdict form and deliver it to the bailiff.

9 11. Did General Atomics intend to perform its promise when it made it?

10 Yes No

11 If you answered Question 11 “no”, go to Question 12. If you answered Question 11 “yes”,
12 please sign and date this verdict form and deliver it to the bailiff.

13 12. Did General Atomics intend that Paul Banks rely on its promise(s)?

14 Yes No

15 If you answered Question 12 “yes”, go to Question 13. If you answered Question 12 “no”,
16 please sign and date this verdict form and deliver it to the bailiff.

17 13. Did Paul Banks reasonably rely on General Atomics’ promise(s)?

18 Yes No

19 If you answered Question 13 “yes”, go to Question 14. If you answered Question 13 “no”,
20 please sign and date this verdict form and deliver it to the bailiff.

21 14. Was Paul Banks’ reliance on General Atomics’ promise(s) a substantial factor in
22 causing harm to him?

23 Yes No

24 If you answered Question 14 “yes”, go to Question 15. If you answered Question 14 “no”,
25 please sign and date this verdict form and deliver it to the bailiff.

26 ///

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1 **B. Statute of Limitations**

2 15. Before February 25, 2006, did Paul Banks discover or could he have discovered
3 through reasonable diligence that GA had committed fraud?

4 Yes No

5 If you answered Question 15 "no", go to Question 16. If you answered Question 15 "yes",
6 please sign and date this verdict form and deliver it to the bailiff.

7 **C. Damages**

8 16. What are Paul Banks' damages for his false promise claim?

9 [If you awarded Paul Banks damages on his breach of contract claim in response to Question 9,
10 do *not* include this amount in your award of damages, if any, on his false promise claim.

11 If you did *not* award Paul Banks damages in response to Question 9, you may award damages in
12 response to this Question 16 for all of his losses, if any, as the Court has instructed.]

13 \$2,900,000

14 Go to Question 17.

15 **D. Malice, Oppression or Fraud**

16 [Answer Question 17 only if you awarded damages in response to Question 16.]

17 17. Do you find by clear and convincing evidence that one or more officers,
18 directors, or managing agents of General Atomics engaged in conduct that forms the basis of
19 your finding of a false promise with malice, oppression, or fraud?

20 Yes No

21
22 Dated: 11/22/2011

23 Signed: Michael Conley
24 Presiding Juror

25 **TRADE SECRET/CONFIDENTIAL INFORMATION CLAIMS**

26 **A. Misappropriation of Trade Secrets**

27 1. Did GA own information constituting a trade secret?

28 Yes No

1 If you answered Question 1 "yes", go to Question 2. If you answered Question 1 "no", go to
2 Question 7.

3 2. Did Paul Banks improperly acquire, use, or disclose a trade secret owned by
4 GA?

5 _____ Yes No

6 Go to Question 3.

7 3. Did TetraVue improperly acquire, use, or disclose a trade secret owned by GA?

8 _____ Yes No

9 If you answered Question 2 OR 3 "yes", go to Question 4. If you answered BOTH Questions 2
10 and 3 "no", go to Question 7.

11 4. Was the conduct of Paul Banks and/or TetraVue in improperly acquiring, using,
12 or disclosing GA's trade secret(s) a substantial factor in causing harm to GA?

13 _____ Yes _____ No

14 If you answered Question 4 "yes", go to Question 5. If you answered Question 4 "no", go to
15 Question 7.

16 5. What are GA's damages?

17 \$ _____

18 Answer Question 6 only if you awarded damages in response to Question 5. If you did not
19 enter an amount in response to Question 5, go to question 7.

20 6. In misappropriating GA's trade secrets, did Banks and/or TetraVue act willfully
21 or maliciously?

22 _____ Yes _____ No

23 Go to Question 7.

24 **B. Conversion**

25 7. Did Paul Banks take possession of GA's property (other than its trade secrets)?

26 Yes _____ No

27 If you answered Question 7 "yes", go to Question 8. If you answered Question 7 "no", go to
28 Question 12.

1 8. Did GA consent to the taking?

2 Yes No

3 If you answered Question 8 "no", go to Question 9. If you answered Question 8 "yes", go to
4 Question 12.

5 9. Was Banks' taking of GA's property (other than its trade secrets) a substantial
6 factor in causing harm to GA?

7 Yes No

8 If you answered Question 9 "yes", go to Question 10. If you answered Question 9 "no", go to
9 Question 12.

10 10. What are GA's damages?

11 \$ _____

12 Go to Question 11.

13 11. In taking GA's property (other than its trade secrets), did Banks and/or TetraVue
14 act with malice, oppression, or fraud?

15 Yes No

16 Go to Question 12.

17 ***C. Breach of Contract***

18 12. Did GA do all, or substantially all, of the significant things that were required by
19 the Inventions and Non-Disclosure Agreement it entered into with Paul Banks?

20 Yes No

21 If you answered Question 12 "yes", go to Question 13. If you answered Question 12 "no", go
22 to Question 14.

23 13. Did Paul Banks do something that the Inventions and Non-Disclosure Agreement
24 prohibited him from doing?

25 Yes No

26 Go to Question 14.

27 ///

28 ///

1 14. Did GA do all, or substantially all, of the significant things that were required by
2 the Continuing Obligations Agreement it entered into with Paul Banks?

3 Yes No

4 If you answered Question 14 “yes”, go to Question 15. If you answered “no” to Question 14
5 but “yes” to Question 13, go to Question 16. If you answered “no” to Questions 12 or 13 and
6 14, please sign and date this verdict form and deliver it to the bailiff.

7 15. Did Paul Banks do something that the Continuing Obligations Agreement
8 prohibited him from doing?

9 Yes No

10 If you answered either Questions 13 or 15 “yes”, go to Question 16. Otherwise, please sign and
11 date this verdict form and deliver it to the bailiff.

12 16. Was GA harmed by Paul Banks’ breach of either Agreement?

13 Yes No

14 If you answered Question 16 “yes”, go to Question 17. If you answered Question 16 “no”,
15 please sign and date this verdict form and deliver it to the bailiff.

16 17. What are GA’s damages for breach of contract?

17 [If you awarded GA damages in response to Questions 5 or 10, do *not* include these amounts in
18 your award of damages, if any, on GA’s breach of contract claims.

19 If you did *not* award GA damages in response to Questions 5 or 10, you may award damages in
20 response to this Question 17 for all losses, if any, as the Court has instructed.]

21 \$ _____

22 Dated: 11/22/2011

23 Signed: Michael Conley
24 Presiding Juror

25 Thereafter, on November 23, 2011, evidence was presented as part of the punitive
26 damages phase before the same jury, the Honorable William S. Dato presiding. Two witnesses
27 testified and evidence was admitted. After being instructed by the Court, the jury deliberated
28 and returned the following special verdict.

1 **PUNITIVE DAMAGES**

2 We, the jury in the above entitled action, answer the question submitted to us as follows:

3 1. What amount of punitive damages, if any, do you award Paul Banks?

4 \$ 5,800,000

5 Dated: 11/23/2011

6 Signed: Michael Conley
7 Presiding Juror

8 **POST-VERDICT PROCEEDINGS RE EQUITABLE CLAIMS AND DAMAGES**

9 Following the jury's verdict, post-trial briefs were filed addressing the remaining
10 equitable issues. General Atomics also made a post-verdict prejudgment motion regarding
11 inconsistent damages, requesting that Banks be required to elect between his contract and fraud
12 remedies. After the Court filed a Statement of Decision and Order on Inconsistent Damages,
13 additional briefing was received addressing the availability of punitive damages in the event
14 Banks elected the contract-based benefit-of-the-bargain measure of compensatory damages.
15 Based on the pleadings, the evidence, and the arguments of counsel, the Court issued rulings as
16 follows:

17 **A. Plaintiff's Constructive Trust Claim vs. GA-ASI**

18 Banks' request for imposition of a constructive trust to make defendant General Atomics
19 Aeronautical Systems, Inc. (GA-ASI) jointly and severally liable on the judgment was denied.

20 **B. GA's Equitable Claims and Defenses**

21 GA's request for permanent injunctive or other equitable relief with respect to its breach
22 of contract and/or unfair competition claims (Bus. & Prof. C. §17200) was denied.

23 GA's defense of unclean hands as against plaintiff's claims was also denied.

24 **C. Plaintiff's Separate Contract and Fraud Compensatory Damages**

25 GA's request that Banks be required to elect between inconsistent compensatory
26 remedies prior to entry of judgment was granted. The Court found that the compensatory
27 damages awarded on the contract and fraud claims were inconsistent. Having been required to
28

1 elect between contract and fraud damages, Banks chose to have judgment entered on the fraud
2 claim.

3 **FINAL JUDGMENT**

4 WHEREFORE, IT IS ORDERED AND ADJUDGED, as follows:

5 (1) Judgment is entered in favor of Plaintiff PAUL BANKS and against Defendant
6 GENERAL ATOMICS. Plaintiff shall have and recover:

7 (a) Two million nine hundred thousand dollars and no cents (\$2,900,000) on his
8 promissory fraud claim; and

9 (b) Five million eight hundred thousand dollars and no cents (\$5,800,000) in
10 punitive damages.

11 (2) Judgment is entered in favor of Cross-Defendants PAUL BANKS and TETRAVUE,
12 INC. and against Cross-Complainant GENERAL ATOMICS on its claims for which it shall
13 recover nothing.

14 (3) Pre-judgment interest shall accrue at the rate of seven (7) percent per annum from
15 November 23, 2011 to the date hereof in the sum of \$_____. (Cal. R. Ct., rule
16 3.1802; *Bullock v. Philip Morris USA, Inc.* (2011) 198 Cal.App.4th 543, 574.)

17 (4) Post-judgment interest shall accrue on this judgment and/or the principal amount
18 remaining unsatisfied at the rate of ten (10) percent per annum. (C.C.P. § 685.010.)

19 (5) The award of costs, and attorneys' fees (if any), shall be addressed by a memorandum
20 of costs and post-judgment motion proceedings (C.C.P. § 1032; Cal. R. Ct., rules 3.1700,
21 3.1702, 8.104); any amounts will be determined later and noted by interlineation here:
22 _____
23 _____

24
25 **IT IS SO ORDERED.**

26 **DATED: JUL 06 2012**
27 _____

28 

HON. WILLIAM S. DATO
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Banks vs. General Atomics

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2009-00084081-CU-BC-CTL

I certify that I am not a party to this cause. I certify that a true copy of the JUDGMENT was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 07/06/2012.

Clerk of the Court, by:


L. San Nicolas

, Deputy

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