

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

FILED
JAN 28 2011
BARBARA DONN, CIRCUIT CLERK
D.C.

**FRISBY AEROSPACE, LLC, now known as
TRIUMPH ACTUATION SYSTEMS, LLC;
TRIUMPH GROUP, INC.;
FRISBY AEROSPACE, INC. n/k/a FOUR
SEVENTEEN AEROSPACE, INC. AND
FRISBY AEROSPACE, INC; JEFFRY D. FRISBY,
KEVIN J. CLARK, JAMES N. WARD,
DOUGLAS J. MURPHY, MICHAEL
K. FULTON, RODNEY L. CASE
and WILLIAM D. GRAYSON**

PLAINTIFFS

VS.

257-1194CIV

**EATON CORPORATION; AEROQUIP-VICKERS,
INC.; EATON HYDRAULICS, INC., f/k/a
VICKERS, INC.; and EATON AEROSPACE, LLC**

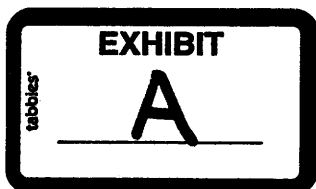
DEFENDANTS

COMPLAINT

Frisby Aerospace, LLC, now known as Triumph Actuation Systems, LLC, Triumph Group, Inc., Frisby Aerospace, Inc. n/k/a Four Seventeen Aerospace, Inc. and Frisby Aerospace, Inc., Jeffry D. Frisby, Kevin J. Clark, James N. Ward, Douglas J. Murphy, Michael K. Fulton, Rodney L. Case, and William D. Grayson file this Complaint as follows:

PARTIES

1. Triumph Actuation Systems, LLC (formerly Frisby Aerospace, Inc., and/or Frisby Aerospace, Inc. n/k/a Four Seventeen Aerospace, Inc.) – the original defendant and counter-plaintiff in *Eaton, et al. v. Frisby, et al.*, Circuit Court of the First Judicial District of Hinds County, Mississippi, Civil Action No. 251-04-642CIV matter ("*Eaton v. Frisby*") – is a Delaware limited liability company with its principal place of business located at 4520 Hampton Road, Clemmons, North Carolina 27012. At the time of many of the events



relevant to these claims, the company was known as Frisby Aerospace, Inc. and therefore, and for ease of reference, this company is referenced as “Frisby.”

2. Triumph Group, Inc. (“Triumph”) is a business corporation chartered under the laws of the state of Delaware with its principal place of business located at 1550 Liberty Ridge Drive, Suite 100, Wayne, Pennsylvania 19087. Triumph is the parent corporation of Frisby. Triumph was an original defendant in *Eaton v. Frisby*.

3. Jeffrey D. Frisby is a resident of the Commonwealth of Pennsylvania. Jeffrey Frisby was an original defendant in *Eaton v. Frisby*.

4. Kevin J. Clark, James N. Ward, Douglas J. Murphy, Michael K. Fulton, Rodney L. Case and William D. Grayson (collectively “the Engineers”) are residents of North Carolina. They were sued by these Defendants in *Eaton, et al. v. Frisby*.

5. For the sake of convenience, the Plaintiffs (Frisby, Triumph, and Jeffrey Frisby) are sometimes referred to collectively as “the Frisby Parties.”

DEFENDANTS

6. Defendants in this matter are the four Eaton-related corporate entities who were the original plaintiffs in *Eaton v. Frisby*. Those four entities are collectively referred to as “Eaton” and include the following:

- A. Eaton Corporation is an Ohio corporation with its principal place of business located in Cleveland, Ohio and was a plaintiff in *Eaton v. Frisby*.
- B. Defendant Aeroquip-Vickers, Inc. is an Ohio corporation with its principal place of business located in Cleveland, Ohio and was a plaintiff in *Eaton v. Frisby*.

C. Defendant Eaton Hydraulics, Inc., formerly Vickers, Inc. is a Delaware corporation with its principal place of business located in Cleveland, Ohio and was a plaintiff in *Eaton v. Frisby*.

D. Defendant Eaton Aerospace, LLC (“Eaton Aerospace”) is a Delaware limited liability company with one of its principal places of business located in Jackson, Mississippi and was a plaintiff in *Eaton v. Frisby*.

Jurisdiction and Venue

7. This Court has jurisdiction over the subject matter pursuant to the provisions of Art. 6 Section 156 of the Constitution of the State of Mississippi (1890) and 42 USC Section 1983 and Section 1988.

8. This Court has personal jurisdiction over each of the defendants as they are or have been doing business in Mississippi. In the alternative, each of the defendants has made a contract to be performed in whole or in part in Mississippi and/or has committed a tort in whole or in part in Mississippi.

9. Venue is proper in this court as the cause of action occurred and/or accrued in Hinds County, Mississippi.

Background Of The Business

10. The motives for the misconduct of Eaton which is the subject of this litigation arise out of disputes relating to the design, production, and sale of hydraulic pumps and hydraulic motors, used in high-end aerospace applications.

11. Hydraulic pumps and motors have been manufactured by a number of manufacturers for approximately a century. The technology is well known and there are few, if any, actual trade secrets related to their manufacture.

12. Hydraulic pumps are used to cause hydraulic fluid to move under pressure in a hydraulic system. That hydraulic fluid under pressure causes hydraulic motors to rotate, thus supplying rotary power to operate or move devices such as the flaps of an aircraft, or to raise or lower its wheels, or to power turbine engine starters or gun drives. Hydraulic fluid under pressure may also be used to cause linear movement of other hydraulic devices, such as actuators, which are used to control or move other parts of an aircraft.

13. Pumps and motors used in the aerospace industry are similar in some respects to those used for other applications. However, because of their size, their functionality, and the purposes they serve, commercial aircraft, business jets, and military aircraft require specialized pump and motor designs. In particular, the performance demands of those aircraft usually require a higher grade of pumps and motors than those used in other applications where weight, size, reliability, and other factors are not as critical. Pumps and motors used for such purposes are generally required to be (a) very reliable, since the survival of the aircraft depends on many such applications, and (b) very light, since efficiency requires that weight be reduced in aerospace applications. For a number of related reasons, such aerospace pumps and motors usually operate at higher speeds and at higher system pressures (typically at or higher than 3000 psi).

14. Because of the distinct characteristics required for high-end aerospace products, pumps or motors used in other applications, including, for example, boats, are not reasonable substitutes for high-end aerospace pump and motor designs. Those unique characteristics also preclude define Original Equipment Manufacturers (OEMs) of large commercial aircraft and military aircraft from using hydraulic pumps and motors designed for smaller and simpler airplanes in their designs.

15. There are significant obstacles to entry for any new manufacturer of high-end pumps and motors in the aerospace industry. Entry into the high-end aerospace pump and motor market by a new competitor that has no background or experience in the business would be likely impossible or, at least, extremely difficult. There are a number of hurdles that any new entrant in this market would face. Any competitor seeking to capture new contracts for high-end aerospace pumps and motors would have to assemble a number of employees with significant experience in the design, manufacture, and testing of such products. As explained in greater detail herein, engineers who specialize in designing pumps and motors for high-end aerospace applications would be critical since engineers with experience in other industries, such as the automobile industry, do not necessarily have skills that are readily transferable.

16. Moreover, a company seeking to compete for new contracts for high-end pumps and motors in the aerospace business would find it difficult, and perhaps impossible, to persuade customers to contract with the company in the absence of some history of successful design, development and production of such products.

17. There are relatively few opportunities for competitors in the market for high-end aerospace pumps and motors to propose to sell new products. Such opportunities generally involve a long lead time between development of a proposal and achieving substantial volume to make a project profitable. This also constitutes a barrier to any company seeking to capture new contracts for high-end aerospace pumps and motors. The number of OEMs that contract to purchase high-end aerospace pumps or motors for use on their aircraft is limited. For commercial applications, the primary OEMs include airplane manufacturers, such as Boeing, Bombardier and Airbus. For military applications, the

customers include large defense contractors like Boeing, Northrop-Grumman, Sikorsky and Lockheed-Martin.

18. The process to acquire a contract for a new project is lengthy. Contracts to produce hydraulic pump and hydraulic motor products for this small group of OEMs are often, but not always, awarded through a process that involves proposing a design that the supplier thinks would best satisfy the operating requirements, weight, and size specified by the OEM.

19. Even before a bid is submitted, a competitor or potential competitor seeking to supply high-end aerospace pumps and motors must incur substantial up-front expenditures of both engineering time and money relating to: (a) the development of the proposal layout and the creation of 3-D computer generated images of the product to exact specifications; (b) the performance of pre-proposal design analysis to make sure the preliminary design meets the OEMs specifications, and is technically feasible; (c) the preparation of a proposed bill of materials; and (d) the creation of costing and pricing predictions and analyses for the proposal.

20. The contracts for hydraulic pumps and hydraulic motors that are put out to bid by large commercial and military OEMs are relatively few and far between because there are relatively few new models of aircraft, and any such new model would generally take several years to design. Opportunities for suppliers to bid are, therefore, relatively infrequent. The contracts awarded are typically long-term and may be highly lucrative. In addition, the party that produces the original pump or motor for the OEM has a very large advantage in providing replacement parts to end users of the aircraft for many years. Moreover, even after the initial contract has lapsed, an OEM and end users of aircraft may, as a practical matter, be

more or less “locked-in” to the pump or motor supplier initially selected, because the cost of another manufacturer becoming approved to provide a similar product as a “second source” may be difficult.

21. Given the typically long-term nature of supply relationships for high-end aerospace pumps and motors, the fact that new projects are only infrequently put out for proposals, and the potential for the winning supplier to realize substantial profits from the contract in the long term, a single winning proposal, especially for a particularly significant OEM, such as Boeing, can have the effect of solidifying an upstart supplier as a legitimate competitive force in the market.

22. OEMs are particularly discriminating in selecting a supplier. Suppliers and potential suppliers of high-end aerospace pumps and motors are few. They compete on innovation, price, and reputation.

Frisby Expanded Its Participation In The Market

23. By 2001, Eaton had come – by various means, including the acquisition of numerous competitors over the years – to dominate the high-end aerospace hydraulic pump and motor market. The next largest competitor Parker Hannifin Corporation (“Parker”) controlled much of the remainder of that market. A much smaller competitor, Honeywell International, Inc. (“Honeywell”), occupied much of the very little remaining market share.

24. Prior to 2001, Frisby had only a very small role in that market. Frisby had been engaged in the design, development, manufacture, and sale of hydraulic aviation products since 1940. For a long time, Frisby’s strength was in hydraulic actuators. However, Frisby had enjoyed some success in selling valves, hydraulic pumps, and other hydraulic products.

25. Notwithstanding the domination of the market by Eaton, Frisby determined in the late 1990s that it would be possible to successfully expand its business into the market for high-end aerospace hydraulic pumps and motors. Frisby believed that there was an opportunity for such an expansion because it perceived that customers were not satisfied with the quality and customer service provided by Eaton and the prices charged by Eaton, but continued to award business to Eaton, in large part, because there were so few alternatives. Frisby resolved to change that and to offer commercial and military aerospace customers another source of supply of high-end pumps and motors.

26. An opportunity arose for Frisby to gain a foothold in the high-end pump and motor market when, in early 2000, Honeywell International, Inc. ("Honeywell"), a much smaller competitor in the high-end aerospace pump and motor market, offered to sell its well-regarded hydraulic pump and motor business. Honeywell had been producing hydraulic pumps and motors for several decades. Its product lines in 2000 included its previously-acquired hydraulic pump and motor products of Garrett Fluid Systems, Aero Hydraulics, and Allied-Signal. By 2000, the "Honeywell line" supplied approximately 25 different pump and motor products for both military and commercial customers, including Boeing, Lockheed, Airbus, Sikorsky, and the Government. Indeed, these Honeywell assets were valuable enough that Eaton itself considered acquiring them.

27. In 2000, Frisby and its parent Triumph Brands, Inc. purchased the Honeywell assets for \$29 million.

28. As a result of the transaction, Frisby acquired the following assets of Honeywell's pump and motor business: (a) certain intellectual property, including patents, trademarks and copyrights; (b) documents and records including specifications, blue prints,

drawings, design data, sales records, inventory records, customer lists and supplier lists; (c) machinery, equipment, fixtures, tools and tangible property; (d) inventories of raw materials, work in progress and finished goods; (e) contracts, agreements, purchase orders, leases and licenses; and (f) all existing transferable government and other permits, licenses and approvals.

29. The design documents obtained by Frisby in connection with the Honeywell acquisition included thousands of detailed design drawings, specifications, processes and other design data from Honeywell and its predecessors.

30. In addition, 40 Honeywell manufacturing employees (including machinists and assembly technicians) and two Honeywell test engineers, all of whom were located in Rocky Mount, North Carolina, joined Frisby after the asset purchase. These employees provided the expertise necessary to perform certain of the functions that would be required to compete successfully with Eaton in the production of high-end aerospace pumps and motors.

31. Thus, with the purchase of Honeywell's pump and motor business, together with Frisby's existing business, Frisby began to emerge as a legitimate competitive threat to Eaton's dominant position in the market for high-end aerospace pumps and motors.

32. While many of the Honeywell employees involved with the pump and motor product line did move to Frisby, the Honeywell design engineers (who were residents at Honeywell's facility in South Bend, Indiana) were unwilling to relocate their families to Frisby's headquarters in North Carolina. Frisby's existing team of engineers was not large enough to fully exploit all of the resources acquired from Honeywell so as to allow Frisby to compete for new contracts for pumps and motors. Frisby thus needed to bulk-up its existing

design engineering team to enhance the product line it had just acquired from Honeywell, and also to create new products.

33. The design of pump and motor products used in high-end aerospace applications requires a specific set of skills and experience, which engineers who have not previously worked in the aerospace industry ordinarily do not possess. To fill its need for additional engineers, and with the help of an engineering headhunting firm, Frisby began to advertise publicly in both industry and general-circulation newspapers and magazines. It also sent a recruitment letter to 650 engineers and engineering companies culled from the member list from the Society of Automotive Engineers. While this work led to the recruitment of some engineers, Frisby still lacked sufficient engineering expertise to successfully compete in the high-end aerospace pump and motor market.

34. Eventually, Frisby came to learn that engineers at Eaton were unhappy with their employment at Eaton, and that talented engineers were looking for a possible change.

35. Thus, in the summer of 2001, Frisby came into contact with James Ward, and began a long process of negotiation regarding the terms under which Ward would be hired. During those negotiations, Ward recommended that Frisby contact a number of other engineers employed by Eaton who would possibly be interested in exploring alternative employment opportunities. These negotiations lasted over several months.

36. Eventually, five of the engineers (James Ward, Rodney Case, Kevin Clark, Mike Fulton, and Doug Murphy) agreed to employment terms with Frisby and they gave their notice to Eaton in early December 2001, telling Eaton they were going to Frisby. These five Engineers offered to stay for approximately one month thereafter for transition purposes,

and Eaton accepted this offer. Accordingly, they began work at Frisby at various intervals between January and February 2002.

37. Engineer Billy Grayson came to work for Frisby several months later. The six former Eaton employees who came to work for Frisby are referred to for convenience herein as “the Engineers.”

Wrongful Conduct Of Eaton And Its Co-Conspirators

38. Much of the wrongful conduct of Eaton and its agents and co-conspirators is reflected in documents that are restricted pursuant to a Protective Order or which have been placed under seal by the parties or the Court in *Eaton v. Frisby*. Thus, this Complaint merely provides, as permitted by the rules, “a short and plain statement of the claim,” in order to avoid any concern as to which documents may or may not be discussed. All of the facts which are extensively set forth in pleadings and other documents already on file in this Court are fully incorporated herein by reference.

39. Eaton’s co-conspirators for purposes of the claim asserted in this action are several lawyers who represented Eaton (including Michael Allred (“Allred”) and Edward Peters (“Peters”)) and Bobby J. DeLaughter.

40. As set forth in detail below, Eaton and its agents and co-conspirators conspired to and did injure Frisby through improper conduct during the course of *Eaton v. Frisby*.

41. Eaton’s goal in the lawsuit was clear. Eaton intended to destroy or cripple Frisby as a competitor. Eaton and its attorneys attempted to create the ability to obtain an undeserved large judgment or settlement to benefit Eaton and its lawyers who had contingent fee agreements. Eaton intended to “make an example” of the Engineers – through filing

meritless or intentionally exaggerated civil litigation and encouraging criminal prosecution – for the purpose of discouraging any other Eaton employee who might prefer to leave Eaton to go to work for competitors. Even though Eaton had not actually identified any particular elements of its pump and motor business that Eaton claimed were trade secrets, Eaton claimed that “everything we do is a secret” – even though most or all of the features of the Eaton products had been well known in the pump and motor industry for decades. Eaton made that overbroad claim of secrecy – which in effect covered anything and everything that any Eaton employee may have learned about pumps and motors during years of a career at Eaton, including that information which is generally known to all in the industry – so as to arm itself to file a lawsuit against any employee who left Eaton and went to work for a competitor. The chilling effect of such threatened litigation discouraged Eaton employees and those competitors that might hire them, and thus allowed Eaton to more easily retain employees who otherwise might want to seek employment elsewhere.

42. The actions taken by Eaton to accomplish those goals, to the extent that they are now known to the Frisby Parties, are described below.

43. Milan Georgeff (“Georgeff”) was an engineer who had previously been employed by Frisby. After Georgeff left Frisby, Georgeff advised Eaton that he had seen Eaton documents while at Frisby. On information and belief, the material produced by Georgeff to Eaton made it clear that the material shown to Eaton by Georgeff actually contained no actual secrets at all. However, in an effort to “catastrophize” the facts so as to create a lawsuit, Eaton and its attorneys improperly entered into a consulting agreement with Georgeff, a fact witness, and agreed to provide him with substantial financial inducements including a promise of future employment with the purpose and effect of affecting his

testimony in that matter so as to be more favorable to Eaton and more damaging to Frisby and its employees. Eaton also provided financial inducements to Georgeff's attorney James Marsala, for the purpose of inducing Marsala to cooperate with Eaton.

44. That false information formed the basis for the civil litigation filed by Eaton and also, on information and belief, was used by Eaton in an effort to urge the United States Attorney to indict Frisby, its officers, and the Engineers.

45. Eaton did not inform the United States Attorney that the information provided by Georgeff was being furnished by a paid witness, choosing instead to conceal that fact from the United States Attorney.

46. Even though the Eaton documents that had been furnished to Eaton by Georgeff reflected very simple generic parts with features well known in the industry, and in no way reflected or revealed any trade secrets, Eaton misled the government by falsely representing that the documents contained highly confidential trade secrets.

47. On information and belief, in addition to providing the information that Georgeff had agreed to provide in exchange for financial inducements, Eaton and its lawyers submitted other false information to the United States Attorney to support its claim that Frisby had in fact used Eaton trade secrets. Among other things, Eaton's argument to support its request that Frisby be indicted was based on the contention that Frisby's recent entry into the high-end aerospace pump and motor market must have been the result of the use of Eaton trade secrets. Eaton argued – premised on that false information – that Frisby could have succeeded in entering the market only by copying trade secrets of Eaton. Eaton persuaded the government on that point by furnishing false and incomplete information to the

United States Attorney intended to suggest that Frisby and its employees had no experience in that market.

48. Thereafter, on information and belief, Eaton and its attorneys, along with employees of Eaton, continued to mislead the United States Attorney's Office by insisting that general information related to pumps and motors was a trade secret of Eaton – when in fact such information was well known to any entity familiar with the industry and much of it had been published in various publications widely distributed in the market.

49. As a result of this misinformation furnished by Eaton to the United States Attorney's Office and the FBI, the FBI caused process to be issued in the form of a search warrant or warrants and a search to be made of the premises of Frisby at which the information described above was discovered.

50. Ultimately, based in part on the foregoing false information, Eaton was successful in its efforts to have the United States Attorney cause the grand jury to indict five of the Frisby Engineers. (In spite of its efforts to do so, Eaton did not succeed in having Frisby itself or its officers indicted.) On information and belief, by continuing its foregoing misrepresentations until the present, Eaton has persuaded the United States Attorney's Office to continue the prosecution of the five Engineers.

51. Eaton acted with malice and without any right or privilege in this continuing course of false and misleading information described above to the Federal Government over a long period of time.

52. As part of its plan to disseminate false information so as to damage Frisby as a competitor, and to otherwise damage Frisby as a competitor, Eaton, with the assistance of its lawyers, Allred and Quarles & Brady, filed a civil action based on the same false

information. As noted above, Eaton and its lawyers knew that much of the information was unreliable since the material facts that supported the Complaint in *Eaton v. Frisby* (“the Complaint”) were based on information that had been obtained from Georgeff in exchange for financial inducements and which had been drafted for Georgeff’s signature by Allred.

53. The timing of the Complaint filed by Eaton reveals Eaton’s true motives. Eaton filed that Complaint only after it became clear to Eaton that Boeing intended to select Frisby – over Eaton – to supply the hydraulic system for Boeing’s 7E7 program, now known as the 787. On information and belief, Eaton and Allred, with the approval of other Eaton lawyers, filed the Complaint in a successful effort to deprive Frisby – and the other Triumph related entities – of the benefits of the Boeing contract. Although Eaton had known of Georgeff’s allegations since November 2002, Eaton waited until July 2004 to file the Complaint, shortly after Frisby fairly beat Eaton to win the contract. Eaton filed the Complaint and communicated with Boeing about its lawsuit in a successful effort to prevent Frisby from receiving the contract.

54. On information and belief, Eaton personnel and perhaps others had communications with Boeing and other third parties about the Complaint which included Eaton’s disclosure of the false and/or substantially misleading information furnished by Georgeff – without disclosing that the information had been furnished by a paid witness. That information furnished by Eaton exaggerated the amount of information in the possession of the Engineers, falsely claimed that such information had been placed in the electronic database of Frisby, and falsely claimed that Frisby’s management had been involved in taking Eaton trade secrets. Eaton knew that the information furnished by Georgeff was unreliable. Thus, Eaton and its lawyers had no proper basis upon which to rely

in making those statements. Eaton acted without any right or privilege in providing false and misleading information to actual and/or prospective customers of Frisby, and others, in order to damage Frisby's reputation and to eliminate or weaken Frisby as a competitor.

55. Eaton not only filed the Complaint based on the unreliable information of Georgeff but continued to maintain that case based on false information, by claiming that anything and everything known to any of the Engineers about pumps and motors when they left Eaton was a trade secret "owned" by Eaton. By filing the Complaint based on extremely overbroad claims of ownership of trade secrets, Eaton attempted to "send a message" to its current employees. That message was that any attempt to leave Eaton and work for a competitor – using knowledge which was well known in the industry – might result in litigation or an indictment. Eaton maintained that claim for an ulterior and improper purpose – in order to dissuade its employees from leaving Eaton and particularly from going to work for Frisby by causing them to fear civil and criminal litigation.

56. During the course of the civil litigation, Eaton and its attorneys abused the process of the Court in an effort to win the case by improper means, as a device to secure a judgment or settlement for Eaton and its lawyers and in an effort to force Frisby from the marketplace. In particular, Eaton and its attorneys intentionally committed material discovery violations in this litigation for the purpose and with the effect of concealing Eaton's improper financial inducements to Georgeff. Those actions were taken for the purpose of assisting Eaton in the civil litigation and to bolster Georgeff's testimony as a witness both in the civil litigation and as a potential witness in the federal prosecution that Eaton and its conspirators hoped to secure.

57. Thereafter, as a result of disclosure by Georgeff in response to discovery requests during a separate litigation filed in North Carolina, the truth about the improper inducements that Eaton had provided to Georgeff came to light – along with the fact that those inducements had been intentionally concealed by Eaton during discovery.

58. Once the facts were known as to the inducements provided to Georgeff and the intentional discovery violations, Eaton and its attorneys faced the possibility of very serious consequences, including monetary sanctions, disciplinary sanctions by the bar, and possible dismissal of the case. In addition, Eaton – a company that publicly promotes itself as highly ethical – faced the prospect of an embarrassing disclosure of the fact that Eaton had acted in a corrupt manner.

59. In an effort to avoid being sanctioned and suffering other consequences for its misconduct, and in a continuation of the efforts to use the civil case in the criminal indictments to cripple or destroy Frisby, Eaton hired Peters, a very close friend of Judge DeLaughter, the then-presiding judge. Eaton hired Peters and allowed him to act in a surreptitious, unethical and illegal manner by influencing Judge DeLaughter through improper *ex parte* communications, which deprived the Frisby Parties of their Constitutional rights to a fair and impartial tribunal.

60. Peters influenced rulings of Judge DeLaughter which effectively immunized Eaton and its attorneys from sanctions and consequences related to the discovery misconduct described above. Moreover, in particular, Peters was involved in communications with DeLaughter about replacing Jack Dunbar with Larry Latham as the Special Master, after Dunbar had issued a number of reports and recommendations which did not favor Eaton. On December 22, 2010, after the conspiracy among Eaton, Peters and DeLaughter to deprive the

Frisby Parties of their Constitutional rights was revealed, Judge Yerger replaced Judge DeLaughter as the presiding judge in the case. Judge Yerger dismissed Eaton's Complaint and all claims with prejudice, finding that Eaton knew or should have known that Peters had improper *ex parte* contacts with Judge DeLaughter on Eaton's behalf.

61. Some of Eaton's lawyers knew of the improper conduct of Peters. Alternatively, if they did not know all the details relating to the misconduct, they did not do so only because they had chosen to remain willfully blind to that conduct.

62. Eaton and its lawyers concealed the improper *ex parte* communications of Peters from the Frisby Parties. Indeed, but for the events flowing from the investigation of the attempt to bribe Judge DeLaughter in another case, the misconduct would never have been discovered. As a result of the fraudulent concealment of the facts relating to the *ex parte* communications, the Frisby Parties could not have discovered – and did not discover – the *ex parte* communications and improper influence until after Larry Latham came forward on January 28, 2008, and after the Court allowed discovery on this matter as part of the proceedings in this case during the course of the year 2008.

63. Thus, Eaton and its lawyers began and continued the civil litigation for the improper purpose of destroying or weakening Frisby as a competitor. They did so by misuse of the litigation pending in this court, by providing improper inducements to Georgeff to provide false statements that favored Eaton, by committing intentional discovery violations and lying under oath to conceal those inducements, and by improperly influencing Judge DeLaughter through the improper *ex parte* communications of Peters.

64. As a direct consequence of the foregoing conspiracy to deprive the Frisby Parties of their Constitutional rights, the Frisby Parties have lost substantial sums of money

as a result of losing business and business opportunities. The pending indictments of the Engineers have caused Frisby to lose sales and profits. In addition, the Frisby Parties have incurred millions of dollars of attorneys' fees and expenses in defending themselves and their employees from claims in litigation. Moreover, Triumph and Frisby have incurred higher borrowing costs as a result of the uncertainty created by Eaton's wrongful civil litigation, which was prolonged by the conspiracy described herein.

65. Frisby has also incurred the substantial cost of paying the Engineers who were indicted over a period of four years, at a time when they could not work as a result of the indictments secured by Eaton using information from a paid fact witness and other information known to be false by Eaton. Moreover, Frisby was deprived of their very valuable services at a time when such were necessary to continue to develop the reputation of Frisby. Finally, the reputation of Triumph, Frisby and their products has been seriously injured, thus depriving it of success in obtaining new contracts which would have enhanced its reputation and which will have a continuing detrimental impact on its business for many years to come.

66. The intentional nature of the foregoing conduct requires an award of punitive damages to the Plaintiffs from each of the Defendants.

CAUSE OF ACTION

COUNT I

42 U.S.C. § 1983 Conspiracy to Deprive Plaintiffs Of Civil Rights

67. The Plaintiffs incorporate by reference the foregoing paragraphs as though set forth fully herein.

68. The Plaintiffs assert claims based on 42 U.S.C. § 1983 against all of the Defendants.

69. The Defendants all acted under color of state law because the foregoing actions were committed as part of a conspiracy between Eaton, Eaton lawyer Ed Peters and then-Judge Bobby DeLaughter, who at all times was a state actor. Eaton and some of its other lawyers either knew of or chose to remain intentionally ignorant of the improper *ex parte* communications of Peters with DeLaughter. That conspiracy intended to, and was temporarily successful in, depriving the Frisby Parties of property without due process of law and its constitutional rights to a fair hearing and an impartial tribunal. Those actions deprived the Frisby Parties of their due process rights protected by the Fifth and Fourteenth Amendments to the United States Constitution, which guarantee a right to a fair hearing and a right to be heard by an impartial tribunal.

70. As a result of the foregoing, the Plaintiffs have suffered damages.


PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that the Court award each of the Plaintiffs judgment against all of the Defendants, jointly and severally, in the following amounts:

- (1) such actual and punitive damages as may be proved at trial to have been caused by Eaton with respect to the allegations set forth hereinabove, in favor of each of the Plaintiffs, plus prejudgment interest;
- (2) all costs in this action, including its reasonable attorneys' fees, pursuant to all applicable statutes or laws, including without limitation of the generality of 42 U.S.C. §1988; and
- (3) such other legal and/or equitable relief that the Court deems just and proper.

RESPECTFULLY SUBMITTED, this the 28 day of January, 2011.

FRISBY AEROSPACE, LLC, now known as
TRIUMPH ACTUATION SYSTEMS, LLC;
TRIUMPH GROUP, INC.;
FRISBY AEROSPACE, INC. n/k/a FOUR
SEVENTEEN AEROSPACE, INC. AND
FRISBY AEROSPACE, INC; and JEFFRY D.
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