

VERDICTS & SETTLEMENTS

CASE IN FOCUS

BREACH OF CONTRACT

Fraud
Oral Agreement

VERDICT: \$1,314,375

CASE/NUMBER: Jim Zender dba Z Tomato Co. v. Vlasic Foods, Inc. / 92455G

COURT/DATE: USDC Southern / October 25, 1994

JUDGES: Hon. Warren Eginton;
Hon. Irma Gonzalez

DISBURSEMENT: \$423,375 general damages; \$891,000 punitive damages.

ATTORNEYS: Plaintiff - A. Daniel Bacalski, Jr. (Bacalski & Byrne, San Diego)

Defendant - Christian F. Dubia, Jr. (Pinto, Gromet, et al., Irvine)

TECHNICAL EXPERTS: Plaintiff - Michael G. Willoughby, C.P.A., La Jolla

FACTS: Defendant Vlasic Foods, Inc., owned by Campbell's Soup, entered into a series of written contracts with Plaintiff Jim Zender for growing pickling cucumbers in Blythe, CA. During the course of those contracts, Vlasic allegedly urged Zender to enter into a long-term lease of farmland for future crop rotation and expansion.

For full case data, see page 2

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TECHNICAL EXPERTS: Plaintiff - Michael G. Willoughby, C.P.A., La Jolla

His 'Columbo' Style Wins High Ratings From Jurors

Name:
A. Daniel Bacalski, Jr.

Name of firm:
Bacalski & Byrne

Location of firm:
225 Broadway, Suite 1200, San Diego, CA 92101

Law school:
Golden Gate University, San Francisco, CA

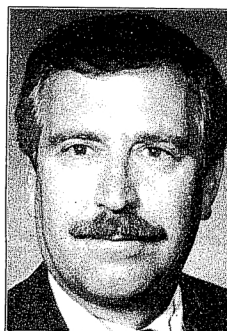
How long practicing:
21 years

Type of cases:
product liability, breach of contract, insurance bad faith, construction defect

Case in focus:
(reported on page 2 in this issue)

Favorite trial moment: In 1992, Bacalski was defending a maritime product liability case. In dramatic fashion, Plaintiff's attorney had 22 boxes of engine room logs brought into the courtroom to show how well maintained the vessel was just prior to an explosion. Apparently unbeknownst to Plaintiff's attorney, two weeks of logs were missing — the two weeks prior to the incident. Not only did the Court refuse to accept the

LITIGATOR PROFILE



"evidence," but Bacalski was able to get an admonishing instruction regarding viewing them with distrust.

Personal: Having spent the first seven years of his legal career in the desert community of Riverside, Bacalski now enjoys spending his free time near the ocean with his wife Virginia and two sons, Ryan and Christopher. He is an avid abalone diver and his personal goal is to someday accompany his diving partners on their annual Golden Gate swim across San Francisco Bay.

What other litigation professionals say about this attorney: Chris Dubia of Pinto, Gromet & Dubia said, "Dan Bacalski has an incredible ability to personalize his client to a jury ... He has a 'Columbo' style, and juries like him." San Diego attorney John F. McGuire said, "Bacalski is looked upon as a peacemaker — he has an ability to bring the forces together."

FACTS: Defendant Vlasic Foods, Inc., owned by Campbell's Soup, entered into a series of written contracts with Plaintiff Jim Zender for growing pickling cucumbers in Blythe, CA. During the course of those contracts, Vlasic allegedly urged Zender to enter into a long-term lease of farmland for future crop rotation and expansion. Vlasic also allegedly encouraged Zender to purchase and lease expensive farm equipment, including tractors and solid set sprinkler systems, in order to grow Vlasic's pickling cucumbers. Vlasic then allegedly made oral promises to Zender that they would enter into a 5-year contract with Zender to grow their pickling cucumbers. After Zender entered the lease of farmland and leased and purchased the equipment, Vlasic decided to cease its cucumber operations in CA after Zender grew only one crop.

CONTENTIONS: Plaintiff Jim Zender contended that he had an oral 2-1/2 year contract to grow cucumbers for Defendant Vlasic Foods, Inc. Zender further contended that he had materially changed his position in reliance upon that oral contract when Vlasic breached the contract. Zender claimed Vlasic denied the existence of the oral contract in bad faith and without probable cause and committed fraud by concealing their true intentions and making false representations about their true intent; corporate changes within the Campbell's structure were the cause of Vlasic's misrepresentations. Vlasic denied Campbell's corporate changes had anything to do with their actions. Vlasic further denied the existence of any oral contract. Vlasic contended that Zender incurred his expenses and signed his long-term land lease hoping that Vlasic would continue its operations in Blythe.

DAMAGES: Zender was sued by the landlord of the ground lease who obtained a settlement judgment in the amount of \$50,000. Zender incurred \$120,000 debt for a solid set sprinkling system; \$27,000 per crop lost profits (at the rate of 2 crops per year for the length of the contract; and lost profits from an ancillary hay operation as well as lost equity in repossessed farm equipment. Plaintiff attorney asked the jury to award \$400,000 plus in actual damages plus a sufficient amount of punitive damages. Defendant attorney asked the jury to award nothing and to find a Defense verdict for Vlasic.

TRIAL JURY: Length 13 days; Poll 8-0; Deliberation 1.5 days.

SETTLEMENT DISCUSSIONS: Plaintiff contends that they made a Rule 68 demand in the amount of \$250,000 and Defendant offered \$50,000.

OTHER INFORMATION: The Honorable Warren Eginton was visiting from Connecticut. This case was trifurcated, tried on liability, burden of clear and convincing on fraud, and on the amount of punitive damages.