

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEDINOL LTD.,

Plaintiff,

-against-

BOSTON SCIENTIFIC CORPORATION,
PETER M. NICHOLAS and LAWRENCE C. BEST,

Defendants.

01 Civ. 2881 (AKH)

SECOND AMENDED
COMPLAINT

PLAINTIFF DEMANDS
TRIAL BY JURY FOR ALL
ISSUES SO TRIABLE

Plaintiff Medinol Ltd. (“Medinol”), by and through its undersigned attorneys, for its Second Amended Complaint against Boston Scientific Corporation (“BSC”), Peter M. Nicholas and Lawrence C. Best avers:

NATURE OF THE ACTION

1. This action seeks redress for a fraudulent scheme by BSC and certain of its top executives to breach BSC’s contracts with, and fiduciary obligations to, Medinol, steal Medinol’s intellectual property, misappropriate opportunities belonging to Medinol and injure Medinol in its property and business. As a result of Defendants’ conduct, Medinol has suffered many hundreds of millions of dollars in damages.

JURISDICTION AND VENUE

2. The Court has subject-matter jurisdiction over Medinol’s claims pursuant to (i) 28 U.S.C. §§ 1331 and 1367, because certain of Medinol’s claims arise under the laws of the United States and Medinol’s other claims form part of the same case or controversy under Article III of the United States Constitution, and (ii) 28 U.S.C.

§ 1332, because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the controversy is between citizens of a State and of a foreign state.

3. Venue is proper in this district under 18 U.S.C. § 1965. Defendants have waived any objection to jurisdiction and venue.

THE PARTIES

4. Plaintiff Medinol Ltd. is a corporation organized under the laws of Israel, with its principal place of business in Israel.

5. Defendant Boston Scientific Corporation is a Delaware corporation with its principal place of business in Natick, Massachusetts.

6. Defendant Peter M. Nicholas is a co-founder of BSC and is its largest shareholder. He is chairman of the BSC Board of Directors and was BSC's CEO and president from 1979 until 1999. Nicholas is a citizen of the United States.

7. Defendant Lawrence C. Best is a senior vice-president and chief financial officer of BSC. Best is a citizen of the United States.

ALLEGATIONS OF FACT

A. The Medinol/BSC Venture

8. Medinol is the developer of innovative, popular and patent-protected stents known as the NIR® family of stents, and of a proprietary method of manufacturing those stents. In the mid-1990's, Medinol sought a co-venturer with experience and presence in the cardiovascular device field that could help bring Medinol's NIR® stents to market by developing delivery catheters for, marketing and selling those stents.

9. In October 1995, Medinol and BSC executed the Confidentiality and Non-Disclosure Agreement (the "Confidentiality Agreement"), the Supply Agreement and the Transaction Agreement, and Medinol, BSC and Medinol's principals, Dr. Judith Richter and Dr. Jacob ("Kobi") Richter, executed the Stockholder Agreement. Each

agreement imposes a duty on BSC not to disclose Medinol's confidential information, intellectual property and trade secrets to third parties.

10. Under the Supply Agreement:

(a) Medinol agreed to design and manufacture stents and sell these stents exclusively to BSC (§ 2.01);

(b) BSC promised to “use all commercially reasonable efforts to promote and market Stents developed by or for Medinol in all significant markets” (§ 2.11) and “to concentrate its Stent business on the development, marketing, distribution and sale of NIR Stents and other Stents developed by or for Medinol under this Agreement” (§ 3.02(b));

(c) if BSC sells any non-Medinol stents anywhere that Medinol stents could have been sold, BSC is required to pay royalties to Medinol (§ 3.02(b));

(d) BSC makes, and Medinol fills, forecasts for BSC's purchase of stents manufactured by Medinol (§3.01);

(e) Medinol, at BSC's request, must establish a back-up stent production line at a BSC facility (the “Alternative Line”) (§ 2.02(a)), but absent a failure by Medinol to meet its contractual obligations respecting BSC's forecasts—which has never occurred—BSC may use the Alternative Line to manufacture only a nominal number of stents necessary to keep the equipment in good condition (§ 2.02(c));

(f) Medinol and BSC must cooperate in obtaining approval from the Food and Drug Administration (the “FDA”) to market and sell Medinol's NIR® stents in the United States (§ 4.02);

(g) BSC is required to submit a Premarket Approval (“PMA”) application to the FDA, designate Medinol “as an additional manufacturer for purposes of the PMA”, and submit a PMA supplement listing Medinol “as an additional distributor of Stents in the United States” (§ 4.02); and

(h) BSC is required promptly to disclose to Medinol all inventions, ideas and improvements relating to stents developed or conceived during the term of the Supply Agreement (§ 2.07).

11. Under the Supply Agreement, Medinol and BSC jointly control and manage their venture, and combine their property, skill and knowledge, by, inter alia, together participating in a development program; consulting each other in connection with the marketing of stents and the retention or termination of key employees; exchanging equipment; sharing access to intellectual property and offices; participating in a joint Steering Committee to direct the business of the venture; sharing profits from the venture's commercial sales under a fixed formula; and sharing expenses. In letters, press releases, analysts' conference calls and its annual report, BSC and its officers have repeatedly described the BSC/Medinol venture as a "partnership".

B. BSC's "Buy/Bye Medinol" Strategy

12. At least as early as March 1997, high-level executives of BSC, including Nicholas and Best, developed a scheme that they named "BBD" (to signify the goal of "Bringing a Better Deal" to BSC) and later "Project Independence" (to signify the goal of freeing BSC of Medinol). Defendants sought to render Medinol irrelevant to the venture by misappropriating Medinol's proprietary NIR® stent technology and using that stolen technology to manufacture stents that BSC could represent to the FDA and the world as "equivalent" to Medinol's stents, and to injure Medinol's business (through repeated breaches of BSC's contractual and fiduciary obligations to Medinol) to such a degree that BSC could purchase Medinol at an artificially depressed price. Indeed, Defendants would in 1999 describe their strategy as "Buy/Bye Medinol"—steal Medinol's technology and then either buy Medinol out cheaply or get rid of it. As early as July 1997, BSC's Executive Committee, including Nicholas and Best, approved the scheme and agreed to facilitate its unlawful aims through acts of mail and wire fraud.

1. Defendants Establish BBD and Steal From Medinol

13. In July 1997, BSC created a shell company in Dublin, Ireland named Forwich Ltd. (“Forwich”), incorporated as a wholly owned subsidiary of Boston Scientific Ireland Limited (“BSIL”), the BSC subsidiary (in Galway, Ireland) to which Medinol delivered its stents. Forwich did business under the name “BBD” and had a “ghost office” (Exhs. 1, 30) with “no traceable links” to BSC and BSIL (Exh. 7) in order to “shield Boston Scientific from being associated with” it (Exh. 1). The conspirators insisted upon the maintenance of “[t]otal secrecy from Medinol and minimal awareness of BSC personnel” (Exh. 5), as Medinol’s discovery of BBD would have a “catastrophic impact on [BSC’s] relationship with Medinol” (Exh. 52); they instructed those involved with BBD to “not discuss [it] with ANYONE” (Exh. 22), “to make everything look legitimate (as much as possible)” (Exh. 42), to tell “lies about this activity to our people to keep them in the dark” (Exh. 38) and to use “roundabout method[s] of keeping vendors in the dark” (Exh. 39), such as “false sign[ing] . . . prints” using an “alias” (Exh. 26) and “pseudo name” (Exh. 25).

14. In the fourth quarter of 1997, Nicholas, Best and others, using the mails and/or interstate wires, approved nearly \$1 million in funding for the operation of BBD. (Exhs. 17 and 18.)

15. BSC hired several individuals, and relied on a select group of BSIL employees, to run the day-to-day operations of BBD. After establishing, funding and staffing BBD, Defendants set up an unauthorized secret stent manufacturing line (the “Secret Line”) at BBD’s facilities in Dublin and began to steal Medinol’s technology. For example, BSC employees visited Medinol and requested confidential information (including inspection routines, Failure Mode Analysis, instructions for operating equipment and technical specifications) from Medinol under the false pretense that they were working to promote the Medinol/BSC venture’s objectives (including the

establishment of the legitimate Alternative Line at BSIL's Galway facilities). In fact, these BSC employees intended to and did provide the information to BBD for use in connection with the Secret Line. Similarly, when Medinol provided Defendants with a folder-welder machine to establish the Alternative Line at BSIL's facilities in Galway, BSC diverted the machine to Lumonics Ltd. ("Lumonics"), which reverse-engineered and copied it, and provided the copy to BBD in Dublin. BSC employees also fraudulently obtained Medinol's etching technology and trade secrets, including drawings of panels chemically etched with Medinol's NIR® stent design, altered these drawings to hide Medinol's ownership of them, and wrongfully disclosed and disseminated the drawings to Micro Metallic Ltd. ("Micro Metallic"), Microponents Ltd. ("Microponents") and at least nine other chemical etch vendors.

16. BSC planned to use BBD, with the assistance of Lumonics, Microponents and Micro Metallic, to manufacture thousands, if not millions, of additional stents using Medinol's technology. Indeed, an October 27, 1998 BSC Project Prioritization matrix confirms that developing knock-off NIR stents was the "priority #1 project", even though reference thereto was to be "cross[ed] off" the "new stent project priority list" because it "is a very sensitive subject and should not be discussed openly". (Exh 33.) BBD, in fact, manufactured thousands of knock-off NIR stents, which it shipped to BSC in the United States.

17. In the second half of 1998, BSC moved BBD's operations to BSIL's Galway site. On and around June 29, 1999, BSC's top management, including Nicholas and BSC's new chief executive officer, Jim Tobin, visited BSIL's facilities in Ireland to tour the BBD operations and to receive an update on BBD's status. Following this visit, this top management team approved the continued operation and funding of BBD.

18. Defendants took steps to secure approval from the FDA to market and sell their knock-off NIR stents. Their plan was falsely to represent to the FDA that BSC

was the sole manufacturer of the NIR® stent system and that Medinol was simply a component supplier/vendor. Thereafter, Defendants intended to invoke a relatively simple regulatory procedure to replace Medinol with BBD as an alternative supplier/vendor. In BSC's euphemism, the PMA amendment would have to be "carefully drafted . . . to use BBD as an alternative vendor" (Exh. 5). As BSC's Bruce Beauchemin explained in a September 10, 1997 memorandum, "[t]he PMA strategy will be to position SciMed [BSC's cardiac division] as the final manufacturer and BSIL as the stent component supplier to SciMed". In furtherance of this plan, Defendants submitted to the FDA a PMA application, dated January 27, 1998, that falsely portrayed BSIL as a stent manufacturer and Medinol as a supplier/vendor. BSC also took a number of steps in violation of its agreements with Medinol in order to further its plan to deceive the FDA.

2. Defendants Promote BSC's Inferior Stents While Delaying Market Introduction of Medinol's Stents

19. As part of their diversion of resources from the Medinol/BSC venture pursuant to the "Buy/Bye Medinol" strategy, Defendants devalued Medinol by diverting resources to BSC's own products, including the knock-off NIR stents and BSC's newly introduced Express stent, and by intentionally delaying introduction of Medinol's stents.

20. BSC's delays of Medinol products include, *inter alia*, at least (i) an approximate one-year delay in the introduction of the premounted stent system, the NIR PRIMO™, in Europe; (ii) a year-long delay in the NIR®'s introduction in the United States; (iii) a four-year delay in the development of a delivery system for Medinol's large vessel and Saphenus Vein Graft stents; (iv) a year-long delay in the introduction of Medinol's NIROYAL® gold-plated Radiopaque stent in Europe and a two- to three-year delay in the introduction of a pre-mounted NIROYAL®; (v) a four-year (and continuing) delay in the development of a delivery system for Medinol's 5-Cell Stent optimized for small vessels (the "NIR® PRINCE"); (vi) a three-year (and continuing) delay in the

development of a competitive delivery system for Medinol's NIRenal® Stent; (vii) a three-year (and continuing) delay in the development of a delivery system for the NIR Conformer™ stent; (viii) a one-year delay in the introduction in the United States of the NIR ON™ Ranger™ system, followed by an additional one-year delay in the reintroduction of the system after balloon leakages caused by BSC's diversion of resources led to a recall of the system; (ix) a one-year delay in the development of a delivery system for the NIR® with SOX™; (x) a one-year delay in the introduction of Medinol's 9-millimeter length stents in the United States; (xi) several lengthy delays in the filing for FDA approval in the United States for the regular NIROYAL® stent and the Conformer NIROYAL®; and (xii) a failure to develop a delivery system for Medinol's new and innovative NIRFLEX™ stent.

21. BSC announced on February 6, 2001 that it has devoted substantial time to developing what Best has described as an “insurance policy”—the Express stent. BSC's development of the Express stent, at the expense of Medinol's stents, constitutes a breach of BSC's contractual obligations and fiduciary duties to Medinol.

22. Moreover, BSC has stolen major features of Medinol's revolutionary NIRFLEX™ technology and incorporated these into the Express stent. On April 11 and September 24, 2001, during meetings with securities analysts, BSC disclosed drawings of the Express stent. These drawings show that the Express stent copies unique design features of Medinol's revolutionary NIRFLEX™ stent—features which were unknown in the world of stent design prior to the development of the NIRFLEX™. The features were known to BSC, however, because Medinol had previously shared information about the NIRFLEX™ stent with BSC. Medinol first provided BSC with information about the design of the NIRFLEX™ stent in the summer of 1998. Medinol subsequently provided BSC with samples of the NIRFLEX™ stent on the following occasions: November 22, 1999; January 27 and 30, 2000; March 22, 27, and 29, 2000; and April 13, 16 and 17,

2000. By May 2000, BSC had more than 2,400 NIRFLEX™ stents in its inventory. BSC misappropriated this NIRFLEX™ technology for use in the Express stent and has even applied for patent protection for its stolen “invention”.

23. BSC also diverted its resources, at the expense of Medinol’s stents, to BSC’s inferior Radius stent. Nicholas repeatedly misrepresented the plans for the Radius stent. For example, in a December 16, 1997 letter, Nicholas falsely told Medinol that BSC would focus on the products of the Medinol/BSC venture and that progress on the FDA approval of NIR® would be unimpeded by the Radius PMA. Instead, BSC gave priority to the Radius.

3. Interference with Medinol’s IPO

24. Defendants sabotaged the initial public offering (“IPO”) that Medinol had planned for 1997 because the IPO would interfere with the scheme to buy Medinol at a discount. Upon learning of the proposed IPO, Defendants proposed that BSC purchase Medinol instead, leading to negotiations between Medinol and BSC regarding such a sale. Defendants never intended to consummate such a sale. Rather, Nicholas, Best and BSC’s Arthur Rosenthal made false representations to Medinol concerning BSC’s intent to purchase Medinol in order to induce Medinol to abandon its plan for an IPO.

25. Nicholas and Best, in several face-to-face meetings with Dr. Judith Richter, Dr. Kobi Richter and Medinol’s bankers and lawyers, between August and December of 1997, told Medinol that BSC was interested in purchasing Medinol. Nicholas sent a fax to Medinol on August 23, 1997, stating that “acquisition [of Medinol by BSC] may remain the best option for both companies” and that “an IPO” is not Medinol’s best option since their “valuation expectation is unsupportable in today’s market”. On November 23, 1997, Nicholas and Best signed a letter of agreement to purchase Medinol.

26. Defendants did not have any intention to go through with a purchase of Medinol on those terms. Rather, Defendants intended to prevent Medinol's IPO, so that their scheme to steal from Medinol would not be disrupted. Medinol abandoned its IPO in reliance on Defendants' misrepresentations concerning their intent to pursue good faith negotiations for a purchase of Medinol by BSC.

4. BSC's Other Efforts to Damage Medinol

27. As part of its "Buy/Bye Medinol" strategy of devaluing Medinol and benefitting itself, BSC has also ignored its contractual and fiduciary obligations to cooperate with Medinol in various respects. For example:

(a) Despite having an obligation to protect and enforce Medinol's intellectual property, BSC chose to work out a deal to its own benefit in a lawsuit that implicated Medinol's contractual and patent rights. In settling a lawsuit with Guidant Corporation ("Guidant"), a competitor of the Medinol/BSC venture, BSC, over Medinol's written objection, covenanted not to sue Guidant for infringement of Medinol's patents. In exchange for this unauthorized purported waiver of Medinol's rights, BSC claimed to have received from Guidant a license to stent intellectual property. Despite having an obligation to disclose to Medinol all of its stent intellectual property developments, BSC failed to disclose to Medinol the stent intellectual property that it claims to have received from Guidant.

(b) BSC also failed to report and disclose its applications for a number of patents, including the application that resulted in U.S. Patent No. 6,042,597; U.S. Patent Application No. 09/111,531; U.S. Patent Application No. 09/151,053; and foreign counterparts thereof. In connection with each of these patent applications, moreover, BSC misused its knowledge of Medinol's intellectual property, which Medinol had disclosed to BSC in connection with the Medinol/BSC venture.

(c) BSC failed to protect Medinol's confidential intellectual property and trade secrets against theft by other persons. For instance, BSC failed to take adequate steps to prevent its former employees from making improper use of Medinol's confidential intellectual property and trade secrets in a company called Sitomed.

(d) BSC altered the packaging of the stent systems marketed by BSC on behalf of the venture by, for example, no longer referring to Medinol as a manufacturer. BSC falsely told Medinol that this was being done for regulatory reasons.

(e) BSC manipulated stent forecasts and purchase orders, and failed to make or unreasonably delayed in making payments owed to Medinol, including, inter alia, improperly withholding payments for thousands of stents delivered by Medinol and accepted by BSC in 1997 for sale in the European market; refusing to make payments arising out of BSC's improper sale of U.S. clinical trial stents in the European market; underpaying Medinol based on BSC's manipulation of transfer price calculations; refusing to pay royalties arising out of BSC's sales of some of its own stents; and unreasonably delaying payment for BSC's share of litigation expenses.

(f) BSC manipulated sales data within its control in order to deceive Medinol into believing that the net sales price of stents (which was used to calculate royalties owed to Medinol) was lower than the actual price. As part of this scheme, BSC included promotional stents (given away for free by BSC) in its calculations as if such free stents were a part of regular sales, resulting in improperly low payments to Medinol.

5. Defendants Partially Disclose BBD To Medinol

28. Jim Tobin, BSC's current CEO, partially disclosed the BBD scheme to Dr. Judith Richter and Dr. Kobi Richter of Medinol in April 2000, after Ernst & Young, BSC's outside auditor, refused to go along with the concealment of BSC's ties to BBD. During an April 2000 meeting, Tobin provided Medinol with a chronology setting forth a partial history of BBD. (Exh. 1.) Referring to BSC and its management, Tobin

told Medinol that he had not known that he was involved with “such crooks” and that he was “ashamed to represent such a dishonest company”. Tobin also committed to a policy of Open Door/Open Files—meaning that BSC would provide Medinol with all information regarding BBD—and to stop the unlawful activity and repair the relationship between Medinol and BSC.

29. BSC has not, in fact, honored Tobin’s commitments. BSC did not stop BBD. Contrary to Tobin’s representation, Defendants continued with their plan to manufacture Medinol’s NIR® stents on the unauthorized BBD line. Defendants also continued to pursue their “Buy/Bye Medinol” strategy by refusing to move forward with the development of products for the venture while at the same time promoting BSC’s own products, such as the Express, based on technology stolen from Medinol. BSC has, despite Tobin’s commitments, continued to make false representations to the FDA and has flatly refused to provide assurances that it would in the future comply with its FDA regulatory obligations. In violation of the parties’ contracts, BSC has made submissions to the FDA without discussion with, and agreement of, Medinol. Defendants have taken these steps and others to injure Medinol, so that BSC can purchase Medinol at an artificially depressed price.

FIRST CLAIM FOR RELIEF
(Breach of Contract)
(Against BSC)

30. Paragraphs 1 through 29 are incorporated herein by reference.

31. BSC and Medinol are parties to the Supply Agreement, the Confidentiality Agreement, the Transaction Agreement and the Stockholder Agreement. Each of these agreements is a valid and binding contract. Medinol has performed under each of these agreements.

32. BSC materially breached both the express terms of these agreements and its implied obligation of good faith and fair dealing thereunder by engaging in the

acts described above, including BSC's unauthorized manufacture of NIR® stents on the Secret Line; BSC's disclosure and dissemination of Medinol's confidential intellectual property and trade secrets to third parties; BSC's wrongful conversion of such confidential intellectual property and trade secrets for its own purposes (including its use of that information to design the Express stent); BSC's failure to promote and market Medinol's stents in all significant markets and to concentrate BSC's stent business on the development, marketing, distribution and sale of Medinol stents; BSC's failure to deliver accurate and timely monthly forecasts to Medinol; BSC's diversion of its research and development efforts and resources toward manufacturing and developing its own stents (including the Express stent) and toward its unauthorized production on the Secret Line; BSC's failure to pay Medinol the royalties it was contractually obligated to pay; BSC's characterization of Medinol as a "vendor" in submissions to the FDA, rather than an "additional manufacturer"; BSC's failure to cooperate with Medinol in the filing of regulatory submissions; BSC's failure promptly to report and disclose BBD's activities to Medinol; BSC's failure to report and disclose BSC's activities related to patents and patent applications; BSC's unauthorized covenant not to sue for patent infringement in exchange for a benefit that accrued only to BSC in the settlement of a lawsuit with Guidant; and BSC's failure to disclose to Medinol its Express stent intellectual property and the stent intellectual property that it claims to have obtained from Guidant.

33. Medinol has suffered and will continue to suffer substantial and foreseeable damages as a result of these breaches of contract by BSC.

SECOND CLAIM FOR RELIEF
(Breach of Contract)
(Against BSC)

34. Paragraphs 1 through 33 are incorporated herein by reference.

35. In 1994, Medinol shared some of its confidential information and trade secrets relating to intravascular ultrasound (“IVUS”) with Cardiovascular Imaging Systems, Inc. (“CVIS”), subject to a confidentiality agreement.

36. On March 9, 1995, shortly after Medinol’s disclosure of its IVUS intellectual property and trade secrets to CVIS, CVIS was acquired by BSC. Following this acquisition, Medinol shared additional IVUS confidential information and trade secrets with BSC (including, among other things, a project plan for IVUS image processing and films and images of Medinol’s technology), subject to Confidentiality and Non-Disclosure Agreements.

37. BSC and Medinol are parties to the IVUS Confidentiality and Non-Disclosure Agreements. Each of these agreements is a valid and binding contract. Medinol has performed under each of these agreements.

38. BSC materially breached both the express terms of these agreements and its implied obligation of good faith and fair dealing thereunder by misappropriating Medinol’s IVUS technology and on November 7, 1997, without Medinol’s knowledge, filing an application for a patent on IVUS imaging enhancement based on the IVUS technology that Medinol had shared with CVIS and BSC. BSC’s patent application resulted in the issuance to BSC on March 23, 1999 of U.S. Patent No. 5,885,218. BSC assigned this patent to Medinol after being confronted by Medinol about BSC’s misappropriation.

39. Medinol has suffered and will continue to suffer substantial and foreseeable damages as a result of these breaches of contract by BSC.

THIRD CLAIM FOR RELIEF
(Breach of Fiduciary Duty)
(Against BSC)

40. Paragraphs 1 through 39 are incorporated herein by reference.

41. BSC owed fiduciary duties to Medinol because BSC and Medinol engaged in a joint venture, doing business in a manner in which Medinol reposed trust and confidence in BSC. BSC's fiduciary duties to Medinol included the duties of utmost care, good faith, fairness, loyalty, honesty and full disclosure.

42. BSC breached these fiduciary duties by the acts and omissions described above (see supra ¶ 32), by promoting its own commercial interests at the expense of the interests of Medinol and the BSC/Medinol venture and by misappropriating for itself opportunities belonging to Medinol and the BSC/Medinol venture.

43. Medinol has suffered and will continue to suffer substantial damages as a result of BSC's breaches of its fiduciary duties.

FOURTH CLAIM FOR RELIEF
(Fraud)
(Against BSC)

44. Paragraphs 1 through 43 are incorporated herein by reference.

45. BSC made material fraudulent representations to Medinol with the intent to defraud Medinol and upon which Medinol relied to its detriment. These material fraudulent representations, as described above, include, inter alia, falsely representing to Medinol that BSC was acting in the interests of the Medinol/BSC venture when it was, in fact, acting in its own interest; falsely representing to Medinol that Medinol's confidential intellectual property and trade secrets would be used in connection with the development of the Alternative Line, when in fact it was used in connection with the creation of the Secret Line; falsely representing to Medinol an intent to purchase Medinol so that Medinol would abandon its plans for an IPO; falsely representing the scope of BSC's marketing efforts for the Radius stent; and falsely representing to Medinol the content of BSC's regulatory filings. Particularized fraudulent communications by BSC are set forth in Paragraph 65 below.

46. These representations were known by BSC to be false at the time they were made and/or BSC made the representation recklessly and without regard to its truth or falsity. BSC intended to defraud Medinol by making these material fraudulent representations.

47. Medinol reasonably relied on these material fraudulent representations and was deceived by them. Medinol reasonably relied on the representations made to it by BSC, which owed Medinol a fiduciary duty of utmost good faith, fairness, loyalty, honesty and full disclosure, and BSC knew that Medinol would rely on these representations. Medinol relied on BSC's representations to its detriment and these false representations caused injury to Medinol. Medinol, in reliance upon these fraudulent representations, entrusted to BSC its intellectual property, invested substantial resources in the Medinol/BSC venture and its products, and abstained from pursuing its rights and remedies under the contracts and common and statutory law.

48. Medinol has suffered and will continue to suffer substantial and special damages as a result of BSC's fraud.

FIFTH CLAIM FOR RELIEF
(Fraudulent Concealment)
(Against BSC)

49. Paragraphs 1 through 48 are incorporated herein by reference.

50. BSC made fraudulent misrepresentations to Medinol upon which Medinol relied to its detriment. BSC possessed information about BBD and the "Buy/Bye Medinol" strategy, and intentionally kept that information hidden from Medinol with the intent to defraud Medinol. BSC had a duty to disclose this information. BSC knew that Medinol acted without knowledge of BBD and the "Buy/Bye Medinol" strategy. Medinol has suffered and will continue to suffer damages as a result of BSC's fraudulent concealment of BBD and the "Buy/Bye Medinol" strategy.

SIXTH CLAIM FOR RELIEF
(Negligent Misrepresentation)
(Against BSC)

51. Paragraphs 1 through 50 are incorporated herein by reference.

52. BSC made misrepresentations to Medinol upon which Medinol justifiably and reasonably relied to its detriment. Medinol, in reliance upon these misrepresentations, entrusted to BSC its intellectual property, invested substantial resources in the Medinol/BSC venture and its products, and abstained from pursuing its rights and remedies under the parties' contracts and common and statutory law. BSC, which owes fiduciary duties to Medinol, made these misrepresentations in the course of business and supplied the information for the guidance of Medinol in its business transactions. BSC failed to exercise reasonable care and competence in obtaining and communicating the information. Medinol has suffered and will continue to suffer substantial damages as a result of BSC's negligent misrepresentations.

SEVENTH CLAIM FOR RELIEF
(Misappropriation of Trade Secrets)
(Against All Defendants)

53. Paragraphs 1 through 52 are incorporated herein by reference.

54. Medinol possesses confidential trade secrets and intellectual property relating to stents (including the NIR® and NIRFLEX™ stents) and stent manufacturing processes, and to IVUS technology. Defendants misappropriated Medinol's confidential trade secrets and intellectual property relating to stents, stent manufacturing processes and IVUS technology and used these confidential trade secrets for improper and unauthorized purposes, including disseminating that technology to BBD and various third-party vendors; putting Medinol's trade secrets to unauthorized commercial use by manufacturing knock-off NIR® stents; copying Medinol's NIRFLEX™ design and using it to develop BSC's Express stent; using Medinol's NIRFLEX™ design to file patent

applications (including U.S. Patent Application No. 09/197,298 and foreign counterparts thereof) that claim Medinol's invention as BSC's own; and using Medinol's confidential information to patent around Medinol's NIR® patents. Medinol has suffered and will continue to suffer substantial damages as a result of this misappropriation of Medinol's trade secrets.

EIGHTH CLAIM FOR RELIEF
(Unjust Enrichment)
(Against BSC)

55. Paragraphs 1 through 54 are incorporated herein by reference.

56. BSC knowingly received benefits from Medinol, including, *inter alia*, Medinol's confidential stent technology, Medinol's confidential IVUS technology and Medinol's assistance in obtaining the PMA and related regulatory approvals for the marketing of NIR® stent technology in the United States. BSC also purports to have received intellectual property rights from Guidant in exchange for BSC's unauthorized waiver of Medinol's rights. Medinol has not received payment for the value of its technology and assistance, or for the rights that BSC purported to surrender to Guidant, all of which BSC has wrongfully used for its own advantage and at Medinol's expense. Under these circumstances, BSC's receipt of Medinol's technology and assistance, Guidant's intellectual property and the fruits thereof constitutes unjust enrichment. It would be inequitable for BSC to retain these benefits without payment of their fair and reasonable value to Medinol.

NINTH CLAIM FOR RELIEF
(Conspiracy)
(Against All Defendants)

57. Paragraphs 1 through 56 are incorporated herein by reference.

58. Each Defendant, by words and/or conduct, knowingly agreed and conspired to participate in a common plan to defraud Medinol, and each engaged in overt

acts in furtherance thereof as particularized above. Medinol has suffered and will continue to suffer substantial damages as a result of Defendants' conspiracy.

TENTH CLAIM FOR RELIEF
(RICO – 18 U.S.C. § 1962(c))
(Against All Defendants)

59. Paragraphs 1 through 58 are incorporated herein by reference.

60. Since at least 1997, and continuously thereafter, BSC has been an enterprise (the "BSC Enterprise"), the affairs of which have been conducted by Nicholas and Best through a pattern of racketeering activity fraudulently to misappropriate Medinol's intellectual property and to injure Medinol in its business and property.

61. Since at least 1997, and continuously thereafter, Forwich Ltd., at times associated-in-fact with Lumonics Ltd., Micro Metallic Ltd. and Microponents Ltd., has been an enterprise (the "BBD Enterprise"), the affairs of which have been conducted by BSC, Nicholas and Best through a pattern of racketeering activity fraudulently to misappropriate Medinol's intellectual property and to injure Medinol in its business and property.

62. Since at least 1997, and continuously thereafter, the venture between BSC and Medinol has been an enterprise, or BSC and Medinol have associated-in-fact as an enterprise (in either event, the "BSC/Medinol Enterprise"), the affairs of which have been conducted by BSC, Nicholas and Best through a pattern of racketeering activity fraudulently to misappropriate Medinol's intellectual property and to injure Medinol in its business and property.

63. The BSC Enterprise, the BBD Enterprise and the BSC/Medinol Enterprise are each an "enterprise" as defined in 18 U.S.C. §§ 1961(4) and 1962(c), the activities of which affected interstate commerce during the relevant times. All three enterprises have a defined and hierarchical decision making structure, function as ongoing, continuing units and carry on business separate and apart from the pattern of

racketeering at issue in this case. Defendants are each a “person” within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

64. Nicholas and Best did conduct, participate in, operate and manage, directly or indirectly, the affairs of the BSC Enterprise, and, in particular, as top BSC executives, Nicholas and Best made key strategic, financial and organizational decisions for BSC. BSC, Nicholas and Best did conduct, participate in, operate and manage, directly or indirectly, the affairs of the BBD Enterprise and the BSC/Medinol Enterprise, and each of them made key strategic, financial and organizational decisions for the BBD Enterprise and the BSC/Medinol Enterprise.

65. The BBD scheme, as detailed above, constituted a scheme or artifice to defraud Medinol and to obtain and disseminate to third parties Medinol’s stent technology, trade secrets and other intellectual property by means of false or fraudulent pretenses, representations or promises. Defendants knowingly participated in the BBD scheme and, on two or more occasions, used the United States mails or private or commercial interstate carriers (the “mails”) in furtherance of the BBD scheme, in violation of 18 U.S.C. § 1341; used the interstate or international wires (the “wires”) in furtherance of the BBD scheme, in violation of 18 U.S.C. § 1343; and aided, abetted, counseled, commanded, induced or procured the same in violation of 18 U.S.C. §§ 1341 and 1343. Defendants used the mails and wires in furtherance of the BBD scheme in, inter alia, the following manners:

(a) Nicholas used the mails and wires (i) to plan, supervise and fund the BBD scheme, including by signing and sending through the mail and/or wires two Capital Expenditure Request & Authorizations (“CERAs”) in the fourth quarter of 1997 (Exhs. 17 and 18) and by receiving through the mail and/or wires updates about the BBD scheme (including, for example, a July 24, 1997 e-mail from Bruce Beauchemin and a May 14, 1999 memorandum from Paul LaViolette); (ii) to further the FDA component of the BBD

scheme by falsely assuring Medinol (in, among other things, letters faxed to Medinol on April 24, 1998 and July 19, 1999) that Medinol would be involved in all substantive communications between BSC and the FDA when he knew the opposite was true; (iii) to cover-up the BBD scheme and lull Medinol into a false sense of security by falsely denying the existence of their scheme by, for example, claiming in an April 24, 1998 letter to Medinol that BSC was not acting in bad faith to undermine, understate, misrepresent or otherwise wrong or harm Medinol, when in truth it was; (iv) to cause Medinol to abandon its IPO as part of the BBD scheme by, for example, falsely representing in a March 21, 1997 letter to Medinol that BSC opposed the IPO because it would interfere with the goals of the BSC/Medinol venture, when in fact BSC opposed the IPO because it would have interfered with the BBD scheme; and (v) to mislead Medinol about BSC's plans to favor its own products (such as the Radius stent) by falsely denying those plans (in, for example, a December 16, 1997 letter to Medinol).

(b) Best used the mails and wires to plan, supervise and fund the BBD scheme, including by signing and sending through the mail and/or wires two CERAs in the fourth quarter of 1997 (Exhs. 17 and 18) and by receiving through the mail and/or wires updates about the BBD scheme (including a May 14, 1999 memorandum from Paul LaViolette).

(c) BSC used the mails and wires (i) to defraud Medinol out of its intellectual property and confidential information by falsely representing the reasons for which BSC was seeking that property and information, including, among other things, by sending a series of communications (including letters from BSC's Stephen Paidosh to Medinol dated August 8, 1997, September 14, 1997, October 13, 1997, and October 14, 1997) that falsely represented the purpose of Paidosh's visit to Medinol's facilities and by faxing an October 15, 1997 letter from BSC's Bernard Collins to Medinol that falsely represented that BSC was requesting NIR Conformer™ stents for sale in the ordinary

course of business (when, in fact, BSC was stockpiling those stents); (ii) to mislead the FDA about Medinol's role in the stent manufacturing process, including by mailing to the FDA on January 27, 1998, a PMA application that falsely portrayed BSIL as the stent manufacturer and Medinol as a supplier/vendor, and by faxing to the FDA on April 2, 1998, a letter that falsely characterized certain stent clinical trials conducted, managed, funded and owned by Medinol as a cooperative venture of several organizations under BSC's responsibility; (iii) to plan and operate the BBD scheme, including by transmitting two CERAs in the fourth quarter of 1997 (Exhs. 17 and 18), monthly status reports sent by Paidosh (including reports dated July 21, 1997 and April 17, 1998), and a July 21, 1997 e-mail from Paidosh to Jim Corbett; and (iv) to cover-up the BBD scheme and lull Medinol into a false sense of security by falsely denying the existence of their scheme and falsely assuring Medinol that Defendants were focusing their efforts on Medinol's stents, including, for example, a May 18, 1998 letter from BSC's Arthur Rosenthal to Medinol falsely stating that "[t]here are no hidden agendas"; a July 16, 1997 letter from Rosenthal to Medinol falsely stating that Medinol's "suspicion[] that somehow BSC has conspired against Medinol is far from the truth"; a May 21, 1998 letter from BSC's Michael Berman falsely stating that BSC was committed to Medinol's stents; and a November 4, 1998 letter from Berman falsely assuring Medinol that BSC was making every effort to reintroduce the NIR ON™ Ranger™ with SOX™ stent system following BSC's recall of that system.

(d) Each Defendant aided, abetted, counseled, commanded, induced or procured the acts of mailing and wiring set forth above, and is thus responsible therefor as a principal pursuant to 18 U.S.C. § 2. In particular, Nicholas and Best commanded, procured and knowingly provided substantial assistance to BSC's acts of mail and wire fraud by approving, funding and supervising those acts and the BBD scheme.

66. These predicate acts constitute a “pattern” of racketeering activity because they were related to each other and shared the same perpetrators, goals, victims, results and methods of commission. They pose a threat of continued criminal activity because Defendants continue to engage in fraud to cover up their wrongdoing and injure Medinol.

67. Medinol was deceived by Defendants’ scheme and in reliance thereon turned over its confidential intellectual property and trade secrets to BSC, failed to take measures to protect its rights under the Medinol/BSC venture and the parties’ contracts and failed to take measures to protect its intellectual property rights and its confidential trade secrets against theft by Defendants.

68. As a result of Defendants’ violations of 18 U.S.C. § 1962(c), Medinol has been injured and has suffered damage to its business and property. Medinol has suffered misappropriation of its confidential information and intellectual property. Its proprietary stent technology and related trade secrets have been improperly disseminated to third parties without authorization. Medinol has suffered a loss of revenue and profits. It has also suffered damage in the form of a loss of value, business and professional reputation as a result of the commission of the predicate acts listed above.

ELEVENTH CLAIM FOR RELIEF
(RICO Conspiracy – 18 U.S.C. § 1962(d))
(Against All Defendants)

69. Paragraphs 1 through 68 are incorporated herein by reference.

70. Beginning with the start of BBD in at least March 1997, and continuously thereafter, Defendants conspired with one another and others to violate the provisions of 18 U.S.C. § 1962(c), as described above. During the relevant times, each Defendant, by words and conduct, knowingly agreed to commit the aforementioned acts in violation of 18 U.S.C. § 1962(c) and in furtherance of the common purposes of the

BSC Enterprise, the BBD Enterprise and the BSC/Medinol Enterprise, and each engaged in overt acts in connection therewith. Each Defendant knowingly agreed to facilitate the predicate acts set forth above, with knowledge that such acts were in furtherance of their pattern of racketeering activity.

71. As a result of Defendants' conspiracy to violate 18 U.S.C. § 1962(c), Medinol has suffered damage to its business and property, as set forth above.

Prayer for Relief

WHEREFORE, Medinol respectfully requests the following relief:

I. Medinol be awarded equitable relief that includes:

(a) An order requiring BSC to add Medinol's name as an additional manufacturer of NIR® stents for purposes of the relevant FDA regulatory submissions; amend or supplement all relevant PMA's that have been filed with the FDA to state that Medinol is an additional manufacturer; amend or supplement all relevant PMA's that have been filed with the FDA to state that Medinol is an additional distributor of NIR® stent systems; take all necessary actions to make such amendments and supplements to the FDA on a timely basis; and take all actions necessary to make such amendments and supplements possible on a timely basis;

(b) A declaration by this Court that BSC no longer has the right under Section 2.01 of the Supply Agreement to use, market, distribute and sell Medinol's stents and Medinol's technology;

(c) A declaration by this Court that BSC no longer has the right under Section 2.01 of the Stockholder Agreement to appoint a director to the board of Medinol;

(d) A declaration by this Court that Medinol may sell its stents and technology independent of BSC. In order to allow Medinol to make, use, market, distribute and sell its stents independently of BSC, the Court should require BSC to:

(i) grant Medinol a life-time royalty-free license to make, use, market, distribute and sell

stent-delivery balloon catheters; (ii) share with Medinol BSC's technology required to manufacture such stent-delivery balloon catheters; and (iii) sell such balloon catheters to Medinol (at the price at which they were previously sold to Medinol, or five-percent of the end-user price) for the interim period while Medinol establishes this manufacturing capability;

(e) To prevent any further misappropriation and improper use by BSC of Medinol's stents and technology, this Court should issue an injunction barring BSC from selling any of Medinol's stents or any stents using Medinol's technology and intellectual property;

(f) To prevent BSC from benefitting further from its misappropriation of Medinol's NIRFLEX™ technology and its use of intellectual property wrongfully obtained in its settlement with Guidant, this Court should issue an injunction barring BSC from selling, marketing, using and distributing any Express stents, and should assign to Medinol ownership of any BSC patent or patent application that incorporates such technology and intellectual property (including U.S. Patent Application No. 09/197,298 and all foreign counterparts thereof);

(g) To prevent BSC from further encumbering Medinol's rights to protect its patents and intellectual property, this Court should issue an injunction barring BSC from making any covenants not to sue, or settling any cases, that affect Medinol's patents and/or intellectual property; and

(h) To prevent BSC from any further misappropriation and improper use of Medinol's confidential intellectual property and technology, this Court should order BSC to return all material systems and items built, designed or manufactured based on the intellectual property and confidential information of Medinol.

II. That Medinol be awarded its actual and compensatory damages in an amount to be proved at trial, with that portion of the damages attributable to Defendants' RICO violations trebled pursuant to 18 U.S.C. § 1964(c).

III. That Medinol be awarded reasonable attorneys' fees and costs pursuant to 18 U.S.C. § 1964(c).

IV. Because Defendants have engaged in gross, wanton and willful fraud; dishonesty and malicious wrongdoing involving a high degree of moral culpability; a course of conduct with willful, wanton and reckless disregard for Medinol's rights and the public interest; and a fraud on the United States government, the FDA and Medinol, thereby seriously compromising the integrity of a critical regulatory process and causing risk to human life, that Medinol be awarded punitive damages.

V. That the Court award such further and other relief as it deems just and proper.

September 28, 2001

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