

Chris Carrington:

We represented a small medical device distributor based out of Inglewood, Colorado, that was distributing medical devices manufactured by one of the world's largest corporations, a \$14 billion a year company called Stryker. Our client had spent years, two decades, in fact, developing the business. And the business, these types of industries are centered around relationships with doctors and hospitals and Stryker essentially overnight, literally in the middle of the night, took all those relationships and took our most tenured sales reps. So, our client and the owner of the company went to bed one night with his company intact, woke up the next morning with his company destroyed.

Chris Carrington:

The case involved about 13 employees. They received job offers about 1:00 AM from Stryker and accepted them that next morning. All clearly at the same time, it was clearly coordinated and that would've been in violation of a non-solicitation, non-diversion covenant. But meanwhile, Stryker said, "We didn't arrange any of this. We didn't coordinate any of this." When you're taking on a number of big firms and you're a small boutique trial firm, like we are, you have to be pretty smart. You have to be pretty efficient and you have to be as agile as possible. And you really have to pick your battles. We rely heavily on technology to help level the playing field. The first document that we found that was the thread we started to pull, was a text message with one of our top sales reps, texting with the corporate representative from Stryker.

Chris Carrington:

One of the main guys at Stryker, in-house, about getting together for a sushi dinner in March 2020. The corporate representative at Stryker had professed that he didn't have any texts and we find one text and it demonstrates, not only are there texts with these Stryker guys, but they're texts to set up these surreptitious meetings. So then we started pushing with the help of the special master to get more and more texts. And eventually we discovered that the Stryker folks had deleted all of their texts. They deleted all of the evidence. In the age of communication with texts there's always another side to that text. It's on someone else's phone, it's in the cloud, it's stuck in an email somewhere. And so in this case, we hired a forensic team to come in, start collecting phones, collecting laptops, looking through clouds, looking through Dropbox, Gmail, and all that stuff.

Chris Carrington:

We subpoenaed their phone records. And then these same guys who had said they didn't have any communication with our employees about coming over to Stryker, just in the weeks prior to the midnight raid, had over 500 phone calls with our employees. Because so much of the evidence had been destroyed it became a credibility contest. One of the key pillars of our case was to destroy their credibility, to put Stryker's representatives on the stand and say, "Did you engage in these actions?" The trial was unique in the sense that Stryker paraded witness, after witness, after witness. Each witness was more incredible and unbelievable than the one before them and the federal judge informed Stryker's lawyers that he was appalled by their litigation conduct. At one point in the trial, he looked at the lawyers. He said, "No more lies, no more hedging, I just want straight truth." You really can't let off the gas in a trial scenario because although you might impeach this witness or that witness, it may be that the fact finder thinks, "Well that person's a liar, but I believe this document or that document."

Chris Carrington:

On the fifth day of trial, their next witness told a just demonstrably false lie that we then impeached with his own text message. When we impeached him with the text message, we showed it to the witness to ask if it refreshed his recollection with respect to a conversation he had, that demonstrated what he had just said under oath was false. The judge then asked to see the text and Stryker's lawyers objected. And they said, "Your honor, it's not admissible." And they had all of these kind of legal nonsense objections. The court was just alarmed. And the court said, "Why are you trying to keep this from me, hand me the text." And that was a pivotal moment in the trial. It was a trial of the bench. So the court took the trial and all the evidence under advisement and the court issued its opinion, about two months later. The court found in our client's favor with respect to our client's claims for breach of contract, the court rejected Stryker's counterclaims.

Chris Carrington:

The court rightfully noted that those counterclaims and those theories only arose once our client had sued Stryker. The court also sanctioned Stryker, sanctioned its attorneys for their litigation misconduct, admonished their attorneys, and then awarded our client all of its reasonable attorney's fees and costs. I immediately spoke with the client and he immediately understood the order, understood that it meant that his business was going to survive. In business, oftentimes might makes right. I mean, if you're big enough and you can wait a war of attrition, you can generally get what you want. That just wasn't the case here. I don't think they counted on our client standing up to them. I don't think they counted on our client finding a way to sustain the litigation.