

NORTH CAROLINA  
IREDELL COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
09 CVS 03733

POLYTEC, INC. )  
)  
Plaintiff, )  
)  
vs. )  
)  
RANDALL F. ANDREWS, ALCHEM )  
INCORPORATED, INDUSTRIAL AND )  
AGRICULTURAL CHEMICALS )  
INCORPORATED, BRENNTAG )  
SOUTHEAST, INC, PURE WATER )  
TECHNOLOGIES, LLC, DENISE K. )  
WOLCOTT and ROBERT WOLCOTT, )  
)  
Defendants. )

DEFENDANT BRENNTAG  
SOUTHEAST, INC.'S RESPONSE TO  
OPPOSITION TO NOTICE OF  
DESIGNATION OF ACTION  
AS MANDATORY COMPLEX  
BUSINESS CASE UNDER  
N.C. GEN. STAT. § 7A-45.4

This is not, as Plaintiff contends, a run-of-the-mill breach of contract dispute. In addition to Plaintiff's breach of contract claim against those who were actually parties to the non-compete agreement at issue, Polytec is also attempting to restrain the legitimate business practices of multiple competitors in the chemical distribution industry who were not parties to the non-compete agreement. Because state unfair competition law is therefore a material issue in this suit, designation of this action as a mandatory complex business case pursuant to N.C. Gen. Stat. § 7A-45.4 was proper, as more fully set forth below:

1. Polytec's overly narrow reading of N.C. Gen. Stat. § 7A-45.4 is unsupported by the plain language of the statute and North Carolina law. While the statute clearly excludes matters in which claims of unfair competition law are based solely on N.C. Gen. Stat. § 75-1.1, the statute also allows for the designation of a lawsuit that "involves a material issue related to...unfair competition law." N.C. Gen. Stat. § 7A-45.4 (emphasis added).

2. Although N.C. Gen. Stat. § 7A-45.4 does not define the term “unfair competition law,” claims of tortious interference and civil conspiracy against a competitor clearly fall within the plain meaning of the term. See Black’s Law Dictionary (2009) (defining “unfair competition” to mean “[d]ishonest or fraudulent rivalry in trade and commerce...[or the] body of law encompassing business and privacy torts, all generally based on deceitful trade practices”). The statute does not require that an action specifically include a claim for misappropriation of trade secrets in order to qualify as a complex business matter based on unfair competition law. To the contrary, the Business Court has previously adjudicated disputes involving tortious interference claims without any claim for misappropriation of trade secrets. See, e.g., Media Network, Inc. v. Mullen Adver., Inc., 2006 NCBC 6 (N.C. Super. Ct. 2006) (involving claims of breach of contract, injunctive relief, tortious interference with contract, trespass to chattels, and unfair and deceptive trade practices). Furthermore, contrary to Plaintiff’s contention, the complaint does in fact seek “an order temporarily, preliminarily and permanently enjoining” Brenntag from “assisting with the violation of the Non-Competition Covenant” between Polytec and the Andrews Defendants. (See Compl., Prayer for Relief at ¶ 4.) Accordingly, this is a case involving an injunction that would prohibit Brenntag from doing business with suppliers and the disputed customers, and thus, as Polytec suggests, it is all the more appropriate for the Business Court.

3. Based on Polytec’s allegations, there is no question that this is a lawsuit that “involves a material issue related to...unfair competition law.” Polytec is suing to enforce a non-compete contained in a stock redemption agreement, entered into as part of a settlement of a shareholder derivative lawsuit. As noted, Polytec is suing not just the parties to the non-compete, but also multiple non-party competitors in the industry. The determination of this case

will have great impact on commerce in this State, to the extent that Polytec's claims could potentially subject legitimate businesses to liability for the contractual obligations of other companies up and down the supply chain. This Court's analysis of the legal justification for business competition not motivated solely by malice, as applied to these facts, will be significant to the development of unfair competition law in North Carolina.

For the foregoing reasons, the North Carolina Business court should retain this action as a mandatory complex business case.

Respectfully submitted this 18<sup>th</sup> day of December, 2009.

SMITH, ANDERSON, BLOUNT, DORSETT,  
MITCHELL & JERNIGAN, L.L.P.

By: /s/ Jang H. Jo  
K. Alan Parry  
N.C. State Bar No.: 31343  
Jang H. Jo  
N.C. State Bar No.: 35686  
2500 Wachovia Capitol Center  
Post Office Box 2611  
Raleigh, NC 27602-2611  
Phone: (919) 821-1220  
Fax: (919) 821-6800  
[aparry@smithlaw.com](mailto:aparry@smithlaw.com)  
[jjo@smithlaw.com](mailto:jjo@smithlaw.com)

ATTORNEYS FOR DEFENDANT BRENNTAG  
SOUTHEAST, INC.

## CERTIFICATE OF SERVICE

This is to certify that the foregoing Response to Opposition of Notice of Designation has been served on all parties by regular mail, addressed as follows, with email copies provided to counsel of record:

Greg C. Ahlum  
Kerry L. Traynum  
Johnston, Allison & Hord, P.A.  
Attorneys for Plaintiff Polytec, Inc.  
P.O. Box 36469  
Charlotte, NC 28236  
[gahlum@jahlaw.com](mailto:gahlum@jahlaw.com)  
[ktraynum@jahlaw.com](mailto:ktraynum@jahlaw.com)

Sean C. Walker  
Woodson, Sayers, Lawther, Short,  
Parrott, Walker & Abramson, L.L.P.  
Attorneys for Defendants Randall F. Andrews, Alchem Inc., and  
Industrial & Agricultural Chemicals, Inc.  
225 North Main Street, Suite 200  
Post Office Box 829  
Salisbury, NC 28145-0829  
[swalk@carolina.rr.com](mailto:swalk@carolina.rr.com)

Eric H. Cottrell  
Jasmine C. Marchant  
Robert B. Cordle  
Mayer Brown LLP  
214 North Tryon Street, Suite 3800  
Charlotte, NC 28202  
[ecottrell@mayerbrown.com](mailto:ecottrell@mayerbrown.com)  
[jmarchant@mayerbrown.com](mailto:jmarchant@mayerbrown.com)  
[rcordle@mayerbrown.com](mailto:rcordle@mayerbrown.com)

Andrew D. Taylor III  
Bell, Davis & Pitt, P.A.  
Suite 2160  
227 West Trade Street  
Charlotte, NC 28202  
[DTaylor@belldavispitt.com](mailto:DTaylor@belldavispitt.com)

This the 18th day of December, 2009.

/s/ Jang H. Jo  
\_\_\_\_\_  
Jang H. Jo