

# Deal gone bad yields lawsuit

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Two men who engineered the \$190 million sale of Goleta-based Indigo Systems to Oregon-based FLIR Systems have sued the firms, alleging that FLIR scuttled their attempts to start a new business venture with Raytheon and seeking damages for the lost deal.

The lawsuit, filed July 10 in Santa Barbara County Superior Court, is the latest episode in a years-old dispute between FLIR and William Parrish and Timothy Fitzgibbons, respectively the former chief executive and chief technical officer of Indigo Systems.

In 2004, Parrish and Fitzgibbons sold Indigo to FLIR for \$190 million.

In June 2006, FLIR filed a Santa Barbara County lawsuit against the men alleging that while on FLIR's payroll, the two hatched a business plan to work with Raytheon to form their own company that would compete against FLIR. FLIR alleged the new company would inevitably steal its trade secrets.

Parrish and Fitzgibbons countered that the business plan had existed since

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## LAWSUIT

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1999 and was revived at FLIR's behest. The two said the new company wouldn't use FLIR's trade secrets; all sides agreed that the two men offered FLIR a stake in the proposed company.

In June, Santa Barbara County Superior Court Judge James Brown ruled against FLIR, calling its motives "anti-competitive" and rebuking the company in a firmly worded 24-page decision. He awarded attorneys fees to Parrish and Fitzgibbons.

"[FLIR and Indigo] were unwilling to take the risk that [Parrish and Fitzgibbons] might be able successfully to compete without misuse of [FLIR's] trade secrets," Brown wrote in his decision.

In the newest lawsuit, Parrish and Fitzgibbons allege that Raytheon pulled out of a prospective business venture with them because of FLIR's suit and seek damages from the company as compensation for the scuttled deal.

In their complaint, Parrish and Fitzgibbons claim that FLIR interfered with their economic relationships by filing a lawsuit against them in bad faith and "by knowingly or negligently making untrue derogatory statements unrelated to the lawsuit about [Parrish and Fitzgibbons]" that disrupted the Raytheon deal.

Brown's earlier ruling presages portions of the two men's allegations, specifically that FLIR's lawsuit botched the talks with Raytheon. "The lawsuit caused

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Judge James Brown  
Santa Barbara County Superior Court

harm to [Parrish and Fitzgibbons]," Brown wrote. "Raytheon stated that it ended negotiations with [Parrish and Fitzgibbons] because this lawsuit was filed."

"We have obviously taken note of the judge's decision in the suit against [Parrish and Fitzgibbons]," said Tony Trunzo, a FLIR spokesman. "We expect to appeal that decision and follow it through the court system before we have any final determination of how this is all played out."

Lawsuits alleging interference with a prospective deal are "very hard to bring," said Joel Mark, a business litigation attorney with Oxnard-based Nordman Cormany Hair & Compton who is not involved with Parrish and Fitzgibbons' case. "It's a very high bar."

Merely showing that a lawsuit hamstrung negotiations isn't enough, Mark explained, because the right to sue is strongly protected. Parrish and Fitzgibbons will have to show not only that FLIR's suit ruined their deal, but that FLIR committed an additional wrongful

act that botched negotiations.

Judge Brown's decision could come back into play as Parrish and Fitzgibbons make their case. "[FLIR] initiated and continued to pursue this action against [Parrish and Fitzgibbons] in bad faith and primarily for the anticompetitive motive of preventing [Parrish and Fitzgibbons] from attempting to create a new business," Brown wrote in his decision.

We think that the judge's order on June 15 says it all," said Los Angeles attorney Brian Panish, Parrish's counsel, referring to Judge Brown's decision finding FLIR at fault and ordering it to pay Parrish's legal bills. "That's what the judge's order was, and we think he was right."

How much Parrish and Fitzgibbons could receive in damages depends on how far along their talks with Raytheon were, Mark said.

If the two sides had talked about the potential value of the deal or how much money they believed they could make, damages could reflect those figures. But if the negotiations were still vague, win-

### LAWSUIT'S TIMELINE

**2004:** William Parrish and Timothy Fitzgibbons sell Goleta-based Indigo Systems to Oregon-based FLIR Systems for \$190 million.

**January 2006:** Parrish and Fitzgibbons' non-compete agreements expire.

**April 2006:** Parrish and Fitzgibbons enter negotiations with Raytheon, signing a letter of intent to start a company.

**June 2006:** FLIR files suit against Parrish and Fitzgibbons alleging they will steal trade secrets to start a business. Raytheon breaks off negotiations.

**June 2008:** Judge rules against FLIR, calling its motives "anticompetitive."

**July 2008:** Parrish and Fitzgibbons file suit seeking damages from FLIR for the scuttled deal with Raytheon.

ning a large sum could be more difficult.

"If there had been some basis beyond speculation, then the court can let the jury make an estimate of the profits that would have been made, and those are the damages," Mark said. "Usually with a startup that has no history, the court will not grant damages because they're speculative."