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Fox Rothschild Podcast

Featuring Litigation Partner John Gotaskie in Pittsburgh

We are talking today with John Gotaskie on Fox Rothschild Podcast. John is a partner and litigator with Fox Rothschild in Pittsburgh. John represents companies, partnerships and individuals in diverse legal matters, including complex commercial litigation, creditor's rights and franchising issues. John, good morning.

John Gotaskie: Thank you. Good morning.

***Question:** John, you recently were lead trial counsel representing a Colorado-based air pollution emission solutions firm, known as ADA-ES, Inc., in the U.S. District Court for the Western District of Pennsylvania. The case involved a contract dispute with Calgon Carbon Corporation. Thanks to your team of Fox Rothschild litigators in Pittsburgh and in Princeton, a federal jury awarded your client a \$12 million verdict. John, that case has received quite a lot of press.*

John Gotaskie: Yes, the news media coverage has just been extensive. The case has been reported by *Bloomberg Business Week*, the *Pittsburgh Post-Gazette*, the *Pittsburgh Business Times*, *The Legal Intelligencer* and some other influential news outlets.

***Question:** John, tell us about the details of the case.*

John Gotaskie: The dispute between ADA-ES and Calgon Carbon arose over the amount of commission Calgon should have paid to ADA-ES for sales of something called powdered activated carbon, which is a type of clean coal technology. *The Legal Intelligencer* has said that this type of carbon is one of the key components of a newly emerging process for removing mercury from the emissions at coal energy power plants.

The jury found Calgon improperly withheld commission payments for sales it made to a third party, Midwest Generation, an electric power generating company based in Illinois. This happened despite the fact Calgon claimed it had terminated a collaborative effort with our client, ADA-ES, to win the Midwest contract.

***Question:** John, what was the jury's finding?*

John Gotaskie: The jury rebuffed Calgon's position that future commission payments be based on a pay-as-you-go system rather than on percentages of the overall value of its contract with \$9 million in future commissions.

***Question:** John, how did this dispute arise in the first place?*

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John Gotaskie: Well, ADA-ES and Calgon originally joined forces in a memorandum of understanding, which we called the “MOU” for short. Under the terms of the MOU, they agreed to jointly pursue sales of activated carbon, with ADA-ES to receive commissions from Calgon for sales that resulted from their joint efforts. When Calgon terminated the MOU, Midwest was in the process of evaluating a joint bid from the ADA-ES/Calgon team. Several months after termination, Midwest awarded a contract for the supply of carbon to Calgon. When ADA-ES requested a commission schedule, Calgon first told ADA-ES that it had not forgotten ADA, but then they refused to pay any commission at all.

Question: What was the gist of your arguments to the jury?

John Gotaskie: The judge instructed the jury that the conduct—or actions of the parties—is evidence of what they believed the MOU meant. So here, we argued the only formal bid submitted to Midwest for the supply of carbon by ADA or by Calgon was the ADA-ES/Calgon joint bid. The joint bid covered the same plants, the same time periods and the same product as the supply contract Midwest awarded to Calgon. Moreover, after notice of termination of the MOU had been given, ADA and Calgon represented that the bid would not be affected by the termination, and ADA continued to support the joint bid. There was just not enough time for Midwest to undertake the same type of formal bidding process if just Calgon had been the sole bidder.

Question: John, were there any particular challenges in presenting your client’s story?

John Gotaskie: Well, yes there were. In fact, during the trial, Western District Chief Judge Gary Lancaster capped the time at 17 hours each that both sides’ legal teams could use to present their cases to the jury. This included opening and closing statements, witness examinations and all other brief remarks – pretty much everything spoken at the trial. Additionally, as ADA is from Colorado and the trial was here in Pittsburgh, Calgon had the “home court advantage”, so to speak. As such, we worked hard to humanize our witnesses and help the jurors understand the case through its facts, not emotions.

Question: John, who was part of your team at Fox Rothschild?

John Gotaskie: We had a fantastic litigation team – both Matthew Payne and Amy Kerr Parker here in Pittsburgh and Chris Kinkade from our Princeton office offered assistance.

Narrator: Well thank you John. To speak with John Gotaskie directly on any aspect of commercial litigation generally, or this case specifically, please contact him at 412-394-5528 or at jgotaskie – that’s J-G-O-T-A-S-K-I-E – at foxrothschild.com.

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