

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>CT SHARED SERVICES,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 93-127-B</b>
	)	
<b>RESONEX, INC.,</b>	)	
	)	
<b>Defendant</b>	)	

**RECOMMENDED DECISION ON DAMAGES**

The plaintiff initiated this action against the defendant for breach of contract, promissory estoppel and negligence. Default was entered against the defendant on April 26, 1994. A duly noticed hearing on damages was held before me on June 6, 1994. The defendant did not appear. The following are my recommended Findings of Fact and Conclusions of Law.

1. The defendant's liability is established by virtue of the entry of default as to each count of the plaintiff's complaint, as follows: (1) breach of warranties; (2) breach of service agreement; (3) breach of modified service agreement; (4) promissory estoppel; (5) negligent service; and (6) negligent design and manufacture.

2. In 1990 the plaintiff, who was already providing mobile CT scanner services to hospitals in Maine, was interested in offering mobile Magnetic Resonance Imaging ("MRI") services as well.

3. The plaintiff purchased an MRI system from the defendant in December 1990.

4. The plaintiff contracted for a single-plug electrical system for the MRI equipment. The electrical system designed by the defendant was insufficient for the amount of energy required

by the MRI equipment.

5. The MRI system frequently overheated, resulting in blown fuses, software crashes and the need for time consuming (8-10 hours) software reloading.

6. The chilling unit in the MRI system was too reliant on outside temperatures, causing the magnet within the MRI equipment to operate at improper temperatures and the system to produce scans of inferior quality. As a result, the plaintiff was often required to redo the scans, increasing the time spent with patients.

7. The quality of an MRI scan also decreases as the amount of time required to complete the scan increases, due to the patient's diminished ability to remain immobile during the scan. With the Resonex system, the plaintiff spent an average of one hour on each scan. With its new replacement Seimens MRI system, which is representative of the norm, the plaintiff spends an average of forty minutes on each scan.

8. As a result of mechanical and electrical problems, the plaintiff experienced at least five hours of unplanned down-time per week during the period of its operation of the Resonex system. In all, the plaintiff experienced ten days of down-time during 1991. The plaintiff has experienced a total of only five hours of unplanned down-time in five months with the Seimens MRI system.

9. The maintenance service provided by the defendant was inadequate, resulting in additional time lost.

### **Electricity Costs**

10. The defendant agreed to compensate the plaintiff for electricity costs in excess of \$20,000 per year, including peak demand charges. This figure was based on an anticipated average cost of electricity per scan of \$12.

11. The defendant was familiar with the electrical usage of mobile MRI units generally.

12. The plaintiff relied on the defendant's express warranty that the average cost of electricity per scan would be \$11 to \$12.

13. The average actual cost per scan of electricity was between \$32 and \$46 dollars.

14. Over the course of approximately three years, the plaintiff completed 8,809 scans with the Resonex MRI system.

15. The plaintiff is entitled to recover \$237,843 in excess electricity costs, as calculated by multiplying the number of scans (8,809) by an average excess cost of \$27 per scan.

### **Loss on Sale of MRI**

16. The plaintiff decided to sell the defective Resonex MRI system in March 1993.

17. The plaintiff's president, Dr. William Blackwell, was told by the defendant's president, Gerald Knudson, that the MRI system was then worth \$1,000,000.

18. The problems the plaintiff experienced with the MRI system had not been repaired by the defendant.

19. The plaintiff sold the Resonex system in October 1993 for \$700,000 to a buyer familiar with the machine's deficiencies.

20. The plaintiff is entitled to recover \$300,000, representing the difference in the fair market value of a comparable non-defective MRI system and the value of the plaintiff's defective MRI system.

### **Consultants**

21. The plaintiff hired an electrical consultant for the purpose of determining the source of the high demand electricity charges. These services cost the plaintiff \$18,000.

22. Due to persistent questions about the quality (and therefore, the validity) of the Resonex system scans, the plaintiff was regularly required to consult radiologists for "over reads," or second opinions, on specific scans. In addition, the plaintiff was required to send random samples to outside radiologists for purposes of quality control. The total cost to the plaintiff for

radiological consultants for these purposes was \$30,000.

23. The plaintiff is entitled to recover \$48,000 in consulting costs.

### **Lost Scans**

24. If the Resonex MRI system had worked as warranted, the plaintiff would have completed 700 additional scans at the locations where it actually conducted scans during the three years it used the Resonex MRI system.

25. The plaintiff's reasonable net profit per scan during the relevant time period was \$425.

26. The plaintiff is entitled to recover \$297,500 in lost profits calculated by multiplying the number of additional scans that would have been conducted at the locations where the plaintiff actually conducted scans during the three years it used the Resonex MRI system by this net-profit-per-scan figure.

### **Lost Profits**

27. The plaintiff also claims damages based upon lost profits for scans projected, but unrealized, at locations other than those where the plaintiff actually conducted business using the Resonex MRI system.

28. The evidence indicates that, six months into operation using the Seimens MRI system, the plaintiff has yet to finalize arrangements with hospitals at any of these additional locations.

29. I conclude the court would be required to engage in inappropriate speculation, given the nature of the evidence supporting the plaintiff's lost profits claim, in determining the number of scans the plaintiff would have performed at locations it does not as yet serve had the Resonex MRI system worked properly. I therefore decline to recommend an award of damages on this basis.

### **Conclusion**

On the basis of the foregoing, I recommend that judgment be entered for the plaintiff CT

Shared Services against the defendant Resonex, Inc. in the amount of \$883,343.

***NOTICE***

***A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.***

***Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.***

***Dated at Portland, Maine this 7th day of July, 1994.***

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***David M. Cohen  
United States Magistrate Judge***