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Dickie McCamey Commercial Litigation Group Recent Victory

Law360, New York, reported in its December 8, 2009 article entitled, "Eaton Found Liable For Old CBS Switchgears," a recent victory for Dickie, McCamey & Chilcote's Commercial Law & Litigation Group. The Dickie McCamey team, which is led by Steven Zoffer and supported by Rick Bode, David McKenery, and Michael Flynn, is involved in federal litigation pending in the U.S. District Court for the Southern District of New York, *CBS Corp. v. Eaton Corp.*, and represents CBS.

This case stems from a \$1 billion transaction in which Eaton purchased from a predecessor of CBS a business unit. Summary judgment was recently granted in favor of CBS. The judge, following an analysis of the parties' asset purchase agreement, ruled that Eaton's purchase of the business unit included the assumption of liability for an antiquated generation of switchgears that sparked five product liability lawsuits. This decision establishes Eaton's liability for both the old switchgears and the \$1 million that CBS spent to resolve the underlying lawsuits.

See the attached article.

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About Dickie, McCamey & Chilcote, P.C.

Dickie, McCamey & Chilcote, P.C. is a nationally recognized litigation firm providing comprehensive legal expertise, as well as non-litigation services, in a multitude of practice areas. Headquartered in Pittsburgh, and founded more than 100 years ago, the firm has grown to include offices in Harrisburg, Philadelphia, Washington D.C., Delaware, New Jersey, North Carolina, Ohio, and West Virginia to serve industry-leading clients across the country. For more information: 800-243-5412 or www.dmclaw.com.



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Eaton Found Liable For Old CBS Switchgears

By **Samuel Howard**

Law360, New York (December 08, 2009) -- A federal judge has given Eaton Corp. a nasty jolt, finding that the power management company is liable under contract for old and allegedly defective metal-clad switchgears acquired in a \$1.1 billion deal with CBS Corp. in 1993.

On Tuesday, Judge Leonard B. Sand of the U.S. District Court for the Southern District of New York granted summary judgment to CBS Corp. on the issue of whether Eaton's purchase contract includes liabilities related to an antiquated generation of switchgears that sparked five product liability suits.

While the court did not rule on CBS' breach of contract claims or bid for damages, the decision is a setback for Eaton as it establishes the defendant's liability for the older switchgears as well as the \$1 million CBS spent to resolve the lawsuits.

Steven W. Zoffer, an attorney for CBS and partner at Dickie McCamey & Chilcote PC, applauded the ruling and said the court's accurate interpretation of the contract is a significant win for CBS.

"CBS is pleased with the court's decision and encouraged by the substantial ruling that Judge Sand handed down. The decision addresses a central issue in the lawsuit and will have a considerable impact on the entirety of the case going forward," Zoffer said.

CBS filed suit in September 2007 after Eaton reneged on an agreement to pay defense expenses, claiming that the lawsuits concerned a circuit breaker and not equipment covered by the 1993 purchase contract, according to the complaint.

In the instant dispute over the scope of the contract, Eaton contends that it is not required to indemnify CBS for the underlying litigation because the contract does not

cover claims arising from a product CBS predecessor Westinghouse Electric Corp. produced five decades ago.

Turning to the contract, however, Judge Sand concluded that the contested phrase “previous generations or models” unambiguously encompasses the DH metal-clad switchgears at issue, which are industrial equipment used to channel and switch electricity.

“The intent to indemnify for the ‘previous generations or models’ of VacClad-W switchgear is unmistakable, and the plain meaning of that term does not countenance Eaton’s limiting construction,” Judge Sand said.

A spokesman for Eaton declined to comment on the lawsuit, and representatives for CBS could not be reached immediately for comment Tuesday.

The dispute stems from Eaton's \$1.1 billion acquisition of CBS' distribution and control business unit in 1993.

The lawsuit seeks a declaration that Eaton Corp.’s product liability obligations under the 1993 agreement include indemnification for the cases dealing with the metal-clad switchgear. CBS also seeks an appropriate award to be determined at trial.

CBS is represented by Dickie McCamey & Chilcote PC and Hodges Walsh & Slater LLP.

Eaton Corp. is represented by Dewey & LeBoeuf LLP, Willkie Farr & Gallagher LLP, Zimmer Kunz PLLC and Katsky Korins LLP.

The case is CBS Corp. v. Eaton Corp., case number 1:07-cv-11344, in the U.S. District Court for the Southern District of New York.