

**ENTERED**

May 30, 2022

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

BMC SOFTWARE, INC.,

Plaintiff,

vs.

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

Defendant.

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CASE NO. 4:17-cv-2254

**FINAL JUDGMENT**

Plaintiff BMC Software, Inc. (BMC) brought claims for breaches of contract, fraudulent inducement, trade-secret misappropriation, and common-law unfair competition by misappropriation against Defendant International Business Machines Corporation (IBM). The court held a bench trial on these claims from March 14 to March 24, 2022. Subsequently, the court issued Findings of Fact and Conclusions of Law in favor of BMC, which are incorporated into this final judgment in full and for all purposes. Dkt. 756. Based on the court’s Findings of Fact and Conclusions of law:

1. BMC’s breach of MLA section 8 claim is DISMISSED WITH PREJUDICE;
2. BMC’s DTSA, TUTSA, and common law unfair competition through misappropriation claims are DISMISSED WITH PREJUDICE;
3. BMC’s breach of 2015 OA section 5.1 claim is DISMISSED WITH PREJUDICE;
4. BMC’ lost profits claim is DISMISSED WITH PREJUDICE;

In addition, the court has determined that the theory asserted by BMC, and found meritorious by the court, which affords BMC the greatest recovery is its claim against IBM for fraudulent inducement. Accordingly, BMC shall recover direct and punitive damages from IBM

on its fraudulent inducement claim, plus prejudgment interest in the amount of 5% and post-judgment interest:

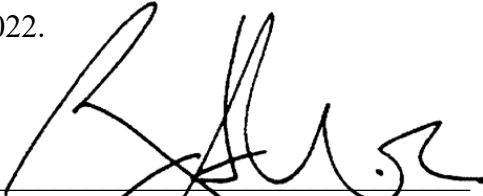
- a. BMC is entitled to recover from IBM \$717,739,615 in actual contractual damages.
- b. BMC is entitled to recover from IBM \$168,226,367.29 in prejudgment interest on the actual damages described above.
- c. BMC is entitled to recover from IBM \$717,739,615 in punitive damages based on fraud found by clear and convincing evidence.
- d. BMC is entitled to recover from IBM post-judgment interest from the date of the entry of judgment at the federally mandated rate. 28 U.S.C. § 1961.

The combined amount of actual damages, exemplary damages, and pre-judgment interest on actual damages awarded to BMC in this judgment against IBM is therefore \$1,603,705,597.29. This combined amount in this judgment shall bear post-judgment interest from the date of entry of judgment until satisfaction or payment at the rate of 2.06% per annum, compounded on an annual basis. If a reviewing court determines that BMC is not entitled to such a judgment as entered and decreed above based on this claim, BMC has reserved its right to seek and recover judgment under an alternative theory of recovery as set forth above and in the Findings of Fact and Conclusions of Law incorporated herein.

Pursuant to Federal Rule of Civil Procedure 58(a), and for the reasons set forth above and further detailed in the Findings of Fact and Conclusions of Law, **FINAL JUDGMENT** is hereby **ENTERED** for Plaintiff BMC Software, Inc. as set forth above.

**IT IS SO ORDERED.**

**SIGNED** in Houston, Texas this 30th day of May, 2022.



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Honorable Gray H. Miller  
Senior United States District Judge