

DISTRICT COURT, CITY AND COUNTY OF
DENVER, STATE OF COLORADO
1437 Bannock Street
Denver, CO 80202

**Plaintiff: COLORADO DEPARTMENT OF
HIGHER EDUCATION d/b/a
COLLEGE ACCESS NETWORK
f/k/a COLORADO STUDENT
LOAN PROGRAM**

**Defendants: RAYTHEON E-SYSTEMS, INC.
d/b/a RAYTHEON COMPANY**

Attorneys for Plaintiff:

Sean R. Gallagher*, No. 16863
Dugan Bliss*, No. 36698
Hogan & Hartson L.L.P.
1200 17th Street, Suite 1500
Denver, CO 80202
Telephone: (303) 899-7300
Facsimile: (303) 899-7333
E-mail: srgallagher@hhlaw.com
dbliss@hhlaw.com

Jenna Langer, No. 32274
Colorado Commission on Higher Education
1380 Lawrence St., Suite 1200
Denver, CO 80204-2059
Telephone: (303) 866-4034
Facsimile: (303) 866-4266
E-mail: jenna.langer@state.co.us

*Special Assistant Attorney General

E-FILED

12-6-05
File Lilly - No Service List

↑ COURT USE ONLY ↑

Case Number: 05 CV 9268

Div.: 18

FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Colorado Department of Higher Education d/b/a College Access Network f/k/a Colorado Student Loan Program ("CSLP" or "Plaintiff") complains against Raytheon E-Systems, Inc. d/b/a Raytheon Company ("Raytheon" or "Defendant") as follows:

JURISDICTION AND VENUE

1. The district court has jurisdiction under Article 4, Section 9 of the Constitution of the State of Colorado.
2. Venue is proper in this Court pursuant to C.R.C.P. 98(c) because, among other things, services were to be performed in this county.
3. Defendant is subject to personal jurisdiction in Colorado because it has transacted business and executed and performed contracts in Colorado.

THE PARTIES

4. CSLP is a division of the State of Colorado with its principal offices at 999 18th Street, Suite 425, Denver, Colorado 80202. As the designated guarantor of student loans for the State of Colorado, CSLP administers the Federal Family Education Loan Program. This program provides Federal Stafford, PLUS, and Consolidation Loans to students and parents through private lenders.
5. Raytheon is a Delaware corporation with its principal place of business located at 6250 LBJ Freeway, Dallas, Texas 75240.

GENERAL ALLEGATIONS

6. In November 2000, Raytheon contacted CSLP and proposed to build a computer system known as the Debt Management System ("DMS"), which would provide CSLP with debt collection, loan servicing and origination/disbursement.
7. Raytheon proposed to develop and provide the DMS to CSLP for a below-market price. As part of this arrangement, CSLP was to pay Raytheon in excess of \$1,000,000 and supply human capital (including the extensive knowledge and expertise of its staff) and access to its current student loan system and relevant files.
8. By gaining access to CSLP's people, system and files, Raytheon would be able to develop the DMS for CSLP, which it would then be able to sell to numerous other state student loan programs as well. This ability to use CSLP's intellectual capital to develop a commercially marketable system was, on information and belief, Raytheon's primary motivation in contracting with CSLP to develop the DMS.
9. CSLP accepted Raytheon's proposal in or about late September or early November, 2000 and they both began working on the DMS. To that end, CSLP and Raytheon entered into a Proprietary Information Agreement on or about January

11, 2001 designed to protect the their respective intellectual property from unauthorized use and disclosure.

10. On or about October 25, 2001, CSLP and Raytheon entered into another agreement known as a Program Pursuit Understanding, in which Raytheon agreed to "plan, design, develop, implement, and test" a debt management system for the purpose of the systemic collection of debt related to student loans for CSLP.

11. On July 25, 2002, CSLP and Raytheon executed a Consulting and Maintenance Agreement (the "CMA"). Pursuant to the terms of the CMA, Raytheon was obligated to "support the [DMS] in accordance with the standards and specifications contained in Attachment A to [the CMA]." Raytheon was also contractually obligated to "provide maintenance to the [DMS] for repairing software defects and incorporating agreed upon legislative and regulatory mandates."

12. In addition to providing human capital and access to its system and files, the CMA provided that "[i]n return for the services provided under Section 4, above, CSLP agrees to pay to Raytheon as follows: (a) for the conversion of applicable data from CSLP's existing system to the [DMS], and for testing to assure that that data has been successfully lodged onto the [DMS], an amount not to exceed seven hundred fifty thousand dollars (\$750,000) calculated on the basis of not to exceed six thousand (6,000) hours being utilized for such purpose - billed at the rate of one hundred twenty-five dollars (\$125) per hour. Tasks shall be performed in accordance with the Addendum A-1 to the Attachment A." Part 23 of the Agreement, entitled "Amendments," provided that "[t]his Agreement may be amended, supplemented or modified only by written instrument duly executed by the parties hereto."

13. The CMA provided for an anticipated completion date for the DMS of between November, 2002 and March, 2003.

14. The Consulting and Maintenance Agreement further provided:

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER.

C.R.S. 24-30-202(1) requires that the State Controller approve all state contracts. *This Contract is not valid until the State Controller, or such assistant as he may delegate, has signed it.* The Contract is not authorized to begin performance until the Contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided. (emphasis supplied)

15. CSLP performed its obligations under the CMA, however Raytheon did not – Raytheon abandoned performance under the contract.

16. Raytheon never implemented the DMS. Nor did Raytheon provide the DMS source code to CSLP. Indeed, on information and belief, Raytheon has not even completed development of the DMS, nearly three years after its anticipated completion date.

17. On information and belief, while Raytheon never completed the DMS, as a result of CSLP's performance under the CMA Raytheon created a product that is marketable and has been sold to third parties, from which Raytheon benefited.

18. Throughout 2001 and 2002, CSLP and Raytheon met on numerous occasions to discuss the requirements of the DMS and the steps needed to implement it. While the effort on both sides was considerable, the development process suffered repeated set-backs caused by Raytheon. Constant staffing turnover at Raytheon and its subcontractors impacted Raytheon's ability to meet its major deliverables. Further, although both sides agreed upon the need for a project plan, Raytheon refused to contribute financially to the maintenance of the project plan despite the fact that it was the project manager. Instead, Raytheon requested that CSLP provide the funding for this service as an additional cost in excess of that agreed upon under contract.

19. Ultimately, an integrated master schedule was developed, clearly setting forth the necessary tasks and time frames for project completion. These schedules were in effect throughout 2003. However, many of deliverables were not met by Raytheon. By the middle of 2003, the project had been so mismanaged by Raytheon that Raytheon approached CSLP for more money to complete the system, again in contradiction of the contractual agreement between the parties. At a meeting on July 23, 2003, Raytheon admitted that they would not make the December 2003 implementation deadline, and refused to guarantee that the pricing proposal made one month earlier would be a final price. While the parties were able to make some further progress on the development of the system over the next year, it became apparent by the Fall of 2004 that Raytheon was not interested in carrying out its obligations.

20. On information and belief, in the process of developing the DMS for CSLP, Raytheon realized that due to CSLP's unique needs, the DMS created for CSLP would not be readily marketable to other state student loan programs, and that the project would be significantly more expensive than Raytheon had anticipated.

21. In a document dated July 15, 2004, Raytheon addressed the problems surrounding the DMS and stated that "[t]he present situation is the result of a

series of faulty management decisions dating back to early 2000. Raytheon was ill-equipped . . . [t]he marketing plan was fatally flawed. . . The current management team . . . is pursuing a strategy with only one goal—get the [DMS] investment off the balance sheet without writing it off and exit the business.”

22. In a document dated September 16, 2004, Raytheon stated that “[f]urther investment in [the DMS] software is not advised.” The reasons provided were that “[r]isks to achieving ‘go-live’ in Colorado on schedule and costs are real; cost may increase significantly” and that there would be a “\$6.1M[illion] additional loss to meet contractual obligations. . .”

23. In October 2004, representatives from Raytheon sought a meeting with representatives from CSLP to discuss the project. At that time, Raytheon advised CSLP that Raytheon had decided that it no longer wished to perform under the terms of the agreements.

24. In November 2004, Raytheon met with the Director of CSLP to discuss the future of DMS project. In that meeting, Raytheon indicated that it was suspending performance under the CMA and that it did not intend to complete its contractual commitments.

25. On information and belief, Raytheon made a calculated decision to abandon the CMA because it believed that the financial burden of performing its contractual obligations outweighed any potential benefit.

26. As a result of Raytheon’s abandonment of the contract, CSLP has suffered a loss in the range of at least \$6,000,000 to \$9,000,000, based on its expenditure of human and monetary capital and other resources, as well as its loss of the DMS and resulting lack of any equivalent modernized debt management system.

FIRST CLAIM FOR RELIEF
(Abandonment/Breach of Contract)

27. CSLP incorporates the preceding paragraphs as if set forth herein.

28. CSLP and Raytheon entered into the CMA, under which Raytheon was obligated to plan, design, develop, implement, and test the DMS for CSLP, as well as provide consulting, maintenance and hosting services and the DMS source code to CSLP.

29. The CMA constitutes a valid, binding, and enforceable contractual obligation.

30. CSLP substantially performed the obligations required of it under the CMA.

31. Raytheon's conduct, including its failure to deliver, implement and test the DMS and its source code, and its failure to provide any consulting, maintenance and hosting services, constituted a breach of the CMA.

32. CSLP has been damaged by Raytheon's breach of the CMA in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
(Unjust Enrichment)

33. CSLP incorporates the preceding paragraphs as if set forth herein.

34. CSLP has a right to receive the DMS and related services from Raytheon in return for its performance of obligations under the CMA.

35. Through Raytheon's receipt of human and monetary capital from CSLP, as well as access to CSLP's system and files and other performance by CSLP, Raytheon received a benefit, for which in equity and good conscience it should reimburse CSLP.

36. As a result of CSLP's performance under the CMA, Raytheon created a product that is marketable and has been sold to third parties, from which Raytheon received a benefit, for which in equity and good conscience it should reimburse CSLP.

~~37. Raytheon appreciated these benefits, which it received at CSLP's expense.~~

38. Raytheon accepted these benefits under such circumstances that it would be inequitable for Raytheon to retain such benefits without payment.

39. As a proximate result of Raytheon's actions, CSLP has suffered damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Promissory Estoppel)

40. CSLP incorporates the preceding paragraphs as if set forth herein.

41. The terms as set forth in the CMA, as well as the course of dealing between the parties, establish a promise between Raytheon and CSLP that

Raytheon would plan, design, develop, implement, and test the DMS for CSLP, as well as provide consulting, maintenance and hosting services and the DMS source code to CSLP.

42. The promise was such that Raytheon should have reasonably foreseen that CSLP would rely on the promise.

43. CSLP relied to its detriment upon the promise made by Raytheon.

44. Raytheon's promise must be enforced to prevent injustice.

45. As a proximate result of Raytheon's actions, CSLP has suffered damages in an amount to be proven at trial.

PRAYER FOR RELIEF

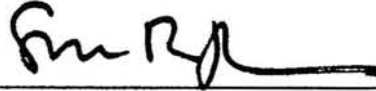
WHEREFORE, CSLP respectfully demands entry of judgment against Raytheon on all causes of action as follows:

1. Awarding monetary damages in an amount to be proven at trial, plus interest;
2. Awarding pre-judgment, post-judgment and such other interest as is permitted by applicable law;
3. Awarding costs, disbursements, attorneys fees, and other costs incurred herein; and
4. Awarding such other and further relief as this Court deems necessary and proper.

PURSUANT TO COLO. R. CIV. P. 38, CSLP HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated this 6th day of December, 2005.

HOGAN & HARTSON L.L.P.



Sean R. Gallagher (No. 16863)

Dugan Bliss (No. 36698)

SPECIAL ASSISTANT ATTORNEYS
GENERAL

COLORADO COMMISSION ON HIGHER
EDUCATION

Jenna Langer (No. 32274)

ATTORNEYS FOR PLAINTIFF

Plaintiff's address:

Colorado Department of Higher Education

d/b/a College Access Network or Colorado Student Loan Program

999 18th Street, Suite 425

Denver, Colorado 80202

Your transaction has been successfully submitted to LexisNexis File & Serve. Your transaction information appears below. To print this information for your records, click anywhere on the transaction information, then click the browser Print button.

To perform another transaction, click **Begin a New Transaction**.

To return to the LexisNexis File & Serve, click **Return to My File & Serve**.

LexisNexis File & Serve Transaction Receipt

Transaction ID: 7590618
Submitted by: Becky Franson, Hogan & Hartson LLP
Authorized by: Sean R Gallagher, Hogan & Hartson LLP
Authorize and file on: Dec 6 2005 5:00PM MST

Court: CO Denver County District Court 2nd JD
Division/Courtroom: 18 - Division 18
Case Class: Civil
Case Type: Breach of Contract
Case Number: 2005CV9268
Case Name: COLO DEPT OF HIGHER EDUCATION vs. RAYTHEON E-SYST INC

Transaction Option: File Only
Billing Reference: 23928.0001

Documents List

1 Document(s)

Attached Document, 8 Pages Document ID: 4729657

[View Original](#) [View PDF](#)

Document Type: Complaint - Amended	Access: Public	Transaction Fee: \$0.00	Linked:
--	--------------------------	-----------------------------------	----------------

Document title:
Amended Complaint and Jury Demand
[View All](#)

Sending Parties (2)

Party	Party Type	Attorney	Firm	Attorney Type
COLO DEPT OF HIGHER EDUCATION	Plaintiff	Gallagher, Sean R	Hogan & Hartson LLP	Privately Retained Attorney
COLO DEPT OF HIGHER EDUCATION (pending)	Plaintiff	Bliss, Dugan W	Hogan & Hartson LLP	Privately Retained Attorney

Recipients (0)

[Service List \(0\)](#)

Delivery Option Party Party Type Attorney Firm Attorney Type Method
 No selections made.

[Additional Recipients \(0\)](#)

Case Parties

DISTRICT COURT, CITY AND COUNTY OF
DENVER, STATE OF COLORADO
1437 Bannock Street
Denver, CO 80202

**Plaintiff: COLORADO DEPARTMENT OF
HIGHER EDUCATION d/b/a
COLLEGE ACCESS NETWORK
f/k/a COLORADO STUDENT
LOAN PROGRAM**

**Defendants: RAYTHEON E-SYSTEMS, INC.
d/b/a RAYTHEON COMPANY**

Attorneys for Plaintiff:

Sean R. Gallagher*, No. 16863
Dugan Bliss*, No. 36698
Hogan & Hartson L.L.P.
1200 17th Street, Suite 1500
Denver, CO 80202
Telephone: (303) 899-7300
Facsimile: (303) 899-7333
E-mail: srgallagher@hhlaw.com
dbliss@hhlaw.com

Jenna Langer, No. 32274
Colorado Commission on Higher Education
1380 Lawrence St., Suite 1200
Denver, CO 80204-2059
Telephone: (303) 866-4034
Facsimile: (303) 866-4266
E-mail: jenna.langer@state.co.us

*Special Assistant Attorney General

↑ COURT USE ONLY ↑

Case Number: 05 CV 9268

Div.: 18

WAIVER AND ACCEPTANCE OF SERVICE

I, ROBERT N. MILLER, Esq., state that I have been authorized by Defendant Raytheon E-Systems, Inc. d/b/a Raytheon Company to accept service of the attached **First Amended Complaint and Jury Demand** on its behalf, as if the same were served formally in compliance with the Colorado Rules of Civil Procedure. I do hereby accept due, legal and timely service of the First Amended

Complaint and Jury Demand, acknowledge receipt of a copy of the First Amended Complaint and Jury Demand, and waive any personal service of the First Amended Complaint and Jury Demand. This Waiver and Acceptance of Service is for the above-captioned matter only.

Dated this _____ day of December, 2005.

Robert N. Miller, No. 1622
Perkins Coie LLP
1899 Wynkoop St., Suite 700
Denver, CO 80202
Telephone: 303-291-2313
Facsimile: 303-291-2400
E-mail: RMiller@perkinscoie.com

ATTORNEYS FOR DEFENDANT