

Teflon Allegations Fail to Stick: Bartlit Beck Secures End of Consumer Fraud MDL for DuPont

By Alison Frankel

When we named Bartlit Beck the winner of our Best Litigation Boutique competition in January, we included a quote from Thomas Sager, the general counsel of DuPont. "It was like this firm just dropped from heaven," Sager told us.

At the time, Bartlit Beck's biggest win for DuPont was a defense verdict in a six-week 2005 trial involving the company's Benlate fungicide. But as of last week, DuPont can thank Bartlit Beck for an even bigger victory: the end of 22 federal class actions alleging consumer fraud in the production and marketing of DuPont's Teflon nonstick cookware, which the plaintiffs claimed is unsafe. On May 1, lead plaintiffs counsel from Kluger, Kaplan, Silverman, Katzen & Levine filed a joint motion with Bartlit Beck, agreeing to drop all of the class actions, which had been combined in an MDL in Des Moines federal district court. At one time, the plaintiffs had claimed more than \$5 billion in damages.

"This is a very significant victory for DuPont," Adam Hoeflich, lead counsel for DuPont, told us. "It closes litigation that's been ongoing for several years. It supports our position that cookware made with nonstick coating is safe. [And] it also supports our faith in the judicial system--the right result happened."

Lead plaintiffs counsel Steve Silverman declined comment to the Litigation Daily, but another of the many, many plaintiffs lawyers involved in the case told The Wall Street Journal

(which first reported the story) that the decision to drop the cases came after plaintiffs failed to win class certification from federal district court senior judge Ronald Longstaff. "The court determined that we did not meet the criteria to have it class certified," Kim Baer told the WSJ. "Given the fact that we cannot proceed as a class action, the cases will not be going forward."

Judge Longstaff denied class certification in a 31-page opinion last December. He found, among other deficiencies in the plaintiffs pleadings, that it was impossible to define the class because not all nonstick cookware employs Teflon, that the plaintiffs couldn't establish typicality, and that they'd failed to put forth name plaintiffs who adequately represented the class. Plaintiffs lawyers appealed his ruling to the Eighth Circuit, which in March declined to hear the interlocutory appeal.

DuPont had no shortage of lawyers in the MDL, either. Hoeflich and Bartlit Beck partner Sean Gallagher argued at the class certification hearing, supported by a team of Bartlit Beck lawyers. Whitfield & Eddy; Shook, Hardy & Bacon; and Kilpatrick Stockton also worked on the case for DuPont.

One of the hallmarks of Bartlit Beck is its willingness to share risk (and rewards) with its clients by building bonuses and success-based fees into its fee deals with clients. This was a pretty big success. So, we asked Hoeflich, will the firm's fee be similarly huge? He laughed, but, alas, declined to comment.