THE NATIONAL LAW JOURNAL

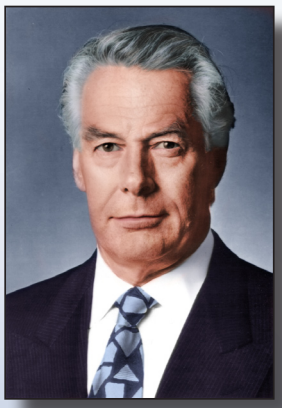
Bartlit Beck Herman Palenchar & Scott llp

WINNING HALL OF FAME

Showcasing The National Law Journal's Past "Winning" Recipients

Winning

Attorneys with significant bench or jury trial verdicts and who have a record of success over many years. Each exemplifies the qualities that make a great lawyer.



FRED H. BARTLIT, JR.

PHILIP S. BECK

Inside

THE NATIONAL LAW JOURNAL

FRED H. BARTLIT JR.

March 13, 1995

SEIZE AUTHORITY EARLY IN THE TRIAL: BE KNOWLEDGEABLE

There is an extra burden on the defendant in a civil case, says Fred H. Bartlit Jr., because the plaintiff gets first crack at convincing the jurors. People like to make up their minds early. If you look at the process of decision-making, when someone reaches an initial feeling and they're comfortable with it, they'll reconcile subsequent facts with the theory, says Mr. Bartlit.

In highly technical cases, the jurors are particularly anxious to find safe harbor quickly, he says: No one likes the feeling of being at sea. They're striving for an explanation.

To prevent an early decision for the other side, he says, defense counsel has to become the authority on the case from the opening statement onward.

The jury is looking for someone who makes the case clear. You want to be the lawyer the jury relies on, Mr. Bartlit says.

Establishing this authority, he says, means never deprecating one's own knowledge of the technology or the evidence.

Don't say you just learned it yesterday, he says. You want to be in total command. The jury is looking for someone to trust. You have to get it right.

Mr. Bartlit often gets it right. A complex litigation specialist, he is best known for his defense of major corporations in products liability, antitrust, intellectual property and other matters, but he also represents plaintiffs in these categories.

His clients include many of the Fortune 500; in upcoming cases, he's representing NL Industries Inc. in multistate litigation involving injuries to children from lead paint chips, United Technologies Corp. in antitrust monopoly litigation over a jet engine silencing device and General Motors Corp. in a bar code reading patent dispute with inventor Jerome H. Lemelson.

Massive Undertakings

Mr. Bartlit has tried more than 40 cases since 1970, most of them massive undertakings with great sums of money at risk. In 1993, he successfully represented FMC Corp. in an insurance coverage case for environmental cleanup costs; in 1992, he successfully defended General Motors Acceptance Corp. in a $40 million lender liability case.

But one of his biggest wins came in 1994, in a defense of a patent infringement lawsuit against his client, Miles Inc. Miles was accused by Ortho Diagnostic Systems Inc. of infringing Ortho's patents for an automated system for counting and sorting blood cells.

Ortho, a division of Johnson & Johnson, had been issued two patents for this system in the early 1970s. The system is used to count red and white blood cells and has been of great use in recent years to count T cells in people with AIDS and those who are HIV-positive. Before this development, blood cells were counted manually. The automated system is sold to hospitals and blood labs; the market is an estimated half a billion dollars a year.

Technicon Instruments Corp., which was bought by Miles in 1989, began marketing its own blood-analyzing equipment in the mid-1980s. Ortho charged that Technicon and Miles had siphoned off more than $150 million in sales by stealing Ortho's blood-analyzing system.

Miles denied the charges. But the defense was made more difficult, Mr. Bartlit notes, by the actions of other companies marketing blood-analyzing systems.

Other people in the industry licensed and paid royalties to the plaintiff, he notes. The jury would think, Why would these companies pay royalties if the patent was not valid?

Miles decided the patent was not valid and it was not infringed, having determined that there were major differences in the products. Both systems involved counting blood cells automatically by shining laser beams through a glass prism. But, Mr. Bartlit says, their patent required converging beams, and Miles' system used diverging beams.

This difference was not easily understood by a lay audience. Indeed, much of the science detailing these blood-analyzing systems was equally arcane. Mr. Bartlit, however, made sure that he would be able to explain the technology to the jurors.

A lot of people are saying that patent cases can't be tried before juries, that people are dumb and they can't understand. But teaching is the key, he says. And if the class doesn't understand, it's the teacher's fault.

An experienced trial lawyer can make any technology understandable, he believes.

For this case, Mr. Bartlit used a high school anatomy textbook to explain to the jury the details on blood and a high school physics text for light refraction. These texts were written by people used to explaining complex things simply, he points out.

Taking a Crash Course

Before the trial, he took a crash course in these subjects himself.

I have to know the invention as well as the inventor, he says. I went to West Point, so I understand the basic technology. For the trial, however, he hired a physicist who specialized in the field to teach him the principles of light transfer, and he spent days with Miles' personnel learning the blood-analyzing systems.

I can't cross their experts until I know it as well as they do, he says. For additional expertise, he notes, you need a patent lawyer as co-counsel.

He and his team also spent days trying to come up with a good analogy to help explain to the jury why the Miles system did not infringe on Ortho's. It's important to take an arcane concept and put it in a common-sense way, he says. This analogy, he says, should be very clear, something that can't be turned around on you. We came up with buttons and zippers.

He put it to the jury that while Miles' and Ortho's systems both counted cells, the systems did not use the same methods. The patent holder is limited to means plus function, he explained, so that if a company holds the patent on buttons, that patent doesn't cover zippers or other fasteners.

Mr. Bartlit kept the opening simple as well; You try to tell a story, he says. So he launched into the tale of how the patent for blood analyzing came about. He told the story chronologically, he says, because people are used to stories told that way. He avoided jamming his opening statement with technological data: If you do that, they've already quit listening. And, he adds, Don't throw out a lot of dates and names, or they'll never be remembered.

He claimed in his story that the real original work on the blood analyzer was done at Los Alamos in the 1960s. Scientists sitting around a table at a conference came up with the idea, he told the jury: Ortho based their patent on someone else's work.

He avoided heavy salesmanship when describing these beginnings.

You don't want to cram a theory down their throats, he explains. You want the jurors to hear a story told and come to conclusions themselves.

Mr. Bartlit keeps his opening statements as brief as possible-no more than 40 minutes: I believe in the old preachers' saying that no soul is saved after 20 minutes.

The opening is critical for the defense, but, he says, cross-examination often proves the turning point. This was certainly true in *Ortho.*

Revealing Cross-Examination

The most telling point, he believes, was in his cross-examination of the plaintiff's key expert witness: It was very apparent he couldn't be trusted.

Mr. Bartlit personally had taken the deposition of this witness before trial. I wanted to get a feel for how he would answer when pressed. In depositions, you get a feeling for how they think-are they argumentative? Do you want them to be argumentative? You ask enough questions for substance, but you don't spring traps. Any traps during depositions, he says, they'll fix it up by the trial.

In the deposition, Mr. Bartlit says, he learned that the expert, was a brilliant guy, but he loved to be evasive. If you asked him a question, everything was yes, but, not necessarily so.

When a witness is evasive on cross-examination, Mr. Bartlit says, there are two ways you can handle it. You can ask the judge, Can the witness be instructed to answer the questions? But that looks like you can't control the witness.

Instead, with this expert, Mr. Bartlit waited patiently while the witness gave a 15-minute answer; then I'd ask, Was that a yes or no? Pretty soon, it looks silly. The jury didn't like him.

At all times during cross, Mr. Bartlit says, I'm trying to get the witness to feel that wherever he turns the walls are closing in on him. But he tries to convey this with subtlety: I never attack. I don't agree with being sarcastic or nasty. You want to be fair, decent, courteous. This is a joint search for truth. If you respect witnesses, you'll get better answers.

For the defense side of the presentation, he used Miles' employees rather than paid experts as witnesses. A lot of times your company people are better witnesses, he says, provided they have been well prepared. Juries expect corporate executives to get it right.

Jurors are not impressed, he notes, when your people keep saying, I don't recall, or I don't know. You get [the company witnesses] up to date on facts, so they're in control and they're helping the jury understand.

This strategy led to a complete defense verdict when, on July 22, 1994, the White Plains, N.Y., jury found no infringement and declared the Ortho patents invalid. Because the jury found no liability, damages were never considered. There will be no appeal.

December 2, 1985

ORTHO DIAGNOSTIC SYSTEMS INC. V. MILES INC.

Attorney: Fred H. Bartlit Jr., 62
Firm: Chicago's Bartlit Beck Herman Palenchar & Scott
Case: Ortho Diagnostic Systems Inc. v. Miles Inc., 90-5043-WCC (S.D. N.Y.)

When asked what it takes to make a winner in the courtroom, the way Fred H. Bartlit Jr. answers tells as much as what he says. Mr. Bartlit responds with an oral presentation – as he would during an actual trial – that is organized, straightforward and concise. He clicks off pointers for pretrial work, and then for the trial itself.

Widely recognized for his characteristic preparation, confidence and love of the battle, Mr. Bartlit has studied the art of courtroom advocacy with the same thoroughness and detail he applies to each of his own cases. And he has had plenty of practice, having brought 30 cases to verdict in the last decade and a half, and having won more than two-thirds of them.

Although one-third of those cases were in the antitrust field. Mr. Bartlit, one of the well-entrenched leaders of his firm and one of its highest earners, made a point of saying his cases have run the gamut from environment and defamation to medical malpractice and personal injury. I do all kinds of litigation – civil and criminal – for all kinds of businesses, he explained.

In preparing the trial, began Mr. Bartlit, the lawyer should do the key work himself, including taking and defending the key depositions. You need help but it should be a small team, he said, noting that for many of his big cases he uses only one or two other lawyers. The small team ensures you do what has to be done and everyone has clear responsibility so nothing falls between the cracks.

But when you're on your feet in court, he said, you have to recognize immediately the significance of every fact and question if the knowledge of the case is spread among too many people, the trial lawyer just can't react the way he should.

Mr. Bartlit believes in testing theories early. I like to get a small, practice jury – people off the street or from the cafeteria in the building to present some of the arguments from both sides. Before we spend years pursuing a theory and building it up. we like to know at least that it will play pretty well in practice, he said.

He tries to avoid making a lot of motions early in the case In big cases judges tend to deny motions, he said, because they want to let the discovery play out a little bit first. When a lawyer makes a lot of motions early on, it looks defensive to the judge; and the lawyer wastes a lot of money, often losing on the motions and creating bad law.

Don't do things that are going to be considered frivolous, Mr. Bartlit added. If you put the judge to a lot of work deciding technically OK but basically silly motions, you lose your credibility with him.

Mr. Bartlit insists that settlement discussions be handled by someone other than himself. Doing well in big cases requires a lot of hard work and long hours. It's difficult to get yourself in the mental state when you basically think the case is going to go away.

Who would climb up those cliffs on Normandy beach if they knew the war was going to be over anyway? he asked.

Nor is he sure that the same person who is really a superb courtroom lawyer is really a superb negotiator. Mr. Bartlit said he likes his client's in-house lawyer to handle the negotiations and not know anything about it himself.

Finally, before the trial Mr. Bartlit writes a summary as to how he thinks the case will play at the end. He lists by computer the propositions he should prove, and uses that list as a guide that he can modify as the trial progresses.

Once in the courtroom, Mr. Bartlit focuses on the key two or three

issues. The mind of the judge or jury, he explained is like an empty cup that you're filling with coffee New issues may flow over the side and you may tip the cup over and lose everything.

The secret, he said, is to get two or three issues that complement each other and keep supporting those issues so the result is not a morass of separate, isolated points.

He offered as an example a case he tried in Chicago in 1981 for Dun & Bradstreet Inc. National Business Lists Inc. had sued Mr. Bartlit's client under antitrust law, claiming it had a monopoly on business databases.

It was an immensely complicated case in terms of possible theory, explained Mr. Bartlit, and there would have been a normal temptation to start arguing this case in terms of economic issues. Instead, he countersued for copyright infringement – arguing that National Business Lists had been stealing from us for years and now they're complaining that they can't steal more.

That is a theory you can sell, Mr. Bartlit noted, explaining how he built a story around his case. Dun & Bradstreet got a jury verdict of $8 million on its counterclaim. *National Business Lists Inc. v. Dun & Bradstreet Inc.*, 522 F. Supp. 89 and 99 (1982).

Mr. Bartlit also firmly believes in sitting alone at the counsel table. While juries aren't dumb [about the resources of a large law firm], there's still something to one lawyer being there and not an army, he observed.

Many aspiring litigators take lessons from their seniors, but at the same time, Mr. Bartlit noted, it is important to be yourself, learn the skills from others, but keep your own basic personality.

Other pointers: Reduce reliance on notes as much as possible, practice almost everything out loud, don't adopt theories that can be shot down or use theories that don't fit into your argument, exhibit leadership when working with a trial team.

Take the positive approach, concluded Mr. Barlit. Have confidence and say "If we're right, we'll prevail. If you're a determined fighter, you'll win."

PHILIP S. BECK

June 2, 2003

WAIT FOR AN OPENING, THEN COUNTERPUNCH

Attorney: Philip S. Beck
Firm: Bartlit Beck Herman Palenchar & Scott, Chicago
Case: Haltom v. Bayer Corp., No. 02-60165-2 (Nueces Co., Texas, Dist. Ct.)

Philip Beck's opponent in the first Baycol trial was plaintiffs' lawyer Mikal Watts, a homegrown prodigy from Corpus Christi, Texas, who played that local card right from voir dire. How could a defense lawyer from Chicago counter that?

He lays it on thick with his local roots and family, Beck said. I spent more time working on the voir dire than I did on the opening or closing or any of the other presentations.

He studied transcripts of Watts in voir dire and noted that he always mentioned his mother, a local judge. She taught him it was impolite to ask questions about people, Watts told jurors, unless he was willing to talk about himself. He then launched into family stories and asked if they'd ever been summoned to his mother's court.

Beck wanted to puncture what he considered a bald appeal to prejudice, but in a way that charmed the jury, he said.

I'm not from Corpus Christi, Beck told the panel, but I can't let him say something about his mother and not say something about mine. The jurors laughed, he said.

They laughed louder when he told them that his parents owned a textbook store in Chicago and he asked whether any jurors had bought a textbook there.

The counterpuncher

I'm a counterpuncher, Beck explained. That's a lot of what I do. You go in there and you wait for the other guy to take a big left hook, and then you duck and look for the opening.

Some openings require quick reactions, he said.

Then again, some reactions that appear impromptu are actually scripted in advance, like his voir dire zinger. And sometimes counterpunching means waiting for an opportunity.

The 52-year-old lawyer hasn't wasted much time waiting, and he hasn't missed many opportunities.

He was previously featured in Winning in 1997. That year he defended a pharmaceutical company accused of negligence when its blood products were contaminated with HIV-positive blood.

In 2001, he won $15 million for an African-American wrongfully imprisoned for 15 years after he was set up for a murder conviction by two Chicago police detectives.

Beck was also on George W. Bush's legal team when attorneys for Bush and Al Gore conducted the last battles for the presidency in 2000.

Beck has continued to thrive in a variety of practice areas, as this sampling of cases suggests, but he doesn't hesitate to call Bush v. Gore the highlight of his career to date. It was, he said, the most visible case I've ever been involved in. And his role, cross-examining Gore's experts, was a prominent one.

Representing the German drug company Bayer A.G. may not have been quite in that league, but the Baycol trial was particularly important because it was the first trial and nearly 8,000 lawsuits were waiting in the wings.

Watts alone represents about 1,500 Baycol plaintiffs, and he seemed to raise the stakes by publicly proclaiming before the trial that the internal documents he obtained in discovery were the most damning documents I've ever reviewed.

Drug withdrawn

Baycol was designed to reduce cholesterol, but Bayer withdrew it from the market in 2001 after it was found to cause serious side effects. Some patients were stricken with rhabdomyolysis, a muscle disorder, and about 100 deaths were linked to the drug.

The plaintiff in the month-long trial that ended in March was 82-year-old Hollis Haltom. Though Haltom fell ill with rhabdomyolysis, he appeared to recover before his health again declined. Beck elicited testimony that his weakened condition was attributable not to Baycol but to other ailments. After 2 1/2 days of deliberations, the jury cleared Bayer of all liability.

One danger in a highly publicized trial, Beck said, is that a lawyer can lose focus. Sometimes lawyers get carried away with their press

clips, he said, and begin presenting evidence for the media. I think it's important to keep your eye on the ball and focus on who's going to decide the case.

In this instance, he felt that the plaintiffs' team lost focus and overreached. By touting their documents, asking for $550 million and suggesting that company executives had acted like criminals, the plaintiffs created an obligation to prove they weren't selling a bill of goods, Beck said. And it created the kind of opening he looks for.

He contended throughout the trial that Watts and company quoted selectively from documents, and he countered by projecting them on a screen and reviewing the context. Many lawyers are assisted by technicians who handle the technology, but Beck believes it's a big advantage to do it himself.

The reason I like to control it with the witnesses is I think it's distracting to listen to all those stage directions when a lawyer cues a technician, and it interrupts the flow of the examination.

If a witness contradicts a document on the screen, Beck can highlight the relevant passage even as the witness speaks, which can be highly unnerving for the witness.

During his closing statement, he seamlessly quoted deposition testimony by playing video clips. And he returned to a document that was much discussed during the trial. An unknown Bayer employee wrote in a memo: Dig, throw the corpse, cover with sand.

They tried to make you think that this memo reflected a view by Bayer, Beck said, that you should just dig a hole and throw the patient in and cover them up with sand because we don't care about people, we don't care about safety and that was a big lie.

As he showed the jury the eight-page memo, the lawyer reminded them that it was written months after the drug was withdrawn and the company was considering bringing it back. The writer thought this would be a mistake, he said. The corpse wasn't patients; it was Baycol.

Near the end of his closing, Beck referred to Watts with increasing frequency, personalizing the case in a way he usually avoids, he acknowledged. Defending the testimony of a Bayer scientist subjected to withering cross-examination, he said:

It's serious business to call somebody a perjurer. Do you think Dr. Posner came in here and committed perjury...or do you think maybe a lawyer who's asking for hundreds of millions of dollars in punitive damages got a little bit carried away?

This was counterpunching with a twist, Beck said. He had turned the case into Mikal Watts beating Phil Beck. I also thought he would rise to the bait and waste a lot of time talking about himself instead of his case.

Watts began his closing this way: Today's an important day. Today is my wedding anniversary. It's also my 5-year-old kid's birthday. After asserting that Beck attacked him because the defense case was weak, Watts continued:

And I want to talk to you about that, because frankly part of it's personal. I have a 5-year-old boy who just listened to his daddy being called a liar.

MAKING COMPLEX MATTERS SIMPLE

September 22, 1997

TO COMMUNICATE WITH THE JURY, IT HELPS TO HAVE BOTH THEMES AND VISUAL AIDS.

Attorney: Philip S. Beck, 46
Firm: Chicago's Bartlit Beck Herman Palenchar & Scott
Case: Howray v. Gulf Coast Regional Blood Center, 94-49929-A (Dist. Ct., Harris Co., Texas)

To win a trial involving a complex matter, attorneys have to establish a simple theme that squares with common sense, says Philip S. Beck. This theme, he believes, does not have to cover everything that is expected to come up in the trial.

Too often lawyers in complex litigation come up with a story that explains away every conceivable piece of evidence, he says. But juries are aware that there are inconsistencies in life.

Mr. Beck subscribes to the principle that when more than one explanation is possible, the simplest explanation is always correct and always the most believable. Much of his pretrial work is devoted to the search for this simple explanation. Trials are often lost, he believes, when lawyers fail to focus on making complex stories simple and understandable.

Mr. Beck is a specialist in handling complex litigation, primarily for the defense in civil cases. He has never lost a jury trial and has achieved some of the largest defense wins of the past several years for such clients as Houston Industries Inc., Dresser Industries Inc., United Technologies Corp. and FMC Corp. His win in a breach-of-contract and fraud charge against United Technologies received an honorable mention in The National Law Journal's 1996 list of best defense wins; another defense win, in which he represented NL Industries in a toxic torts action, was one of the top 15 in the NLJ's 1994 list.

His most recent major victory came in April in Houston, where he defended Alpha Therapeutic Corp. on charges that it and co-defendant Armour Pharmaceutical Co. had negligently failed to prevent the contamination by the HIV virus of the blood concentrates they produced. These concentrates had been considered a wonder drug by hemophiliacs because they enabled them to live nearly normal lives, Mr. Beck notes. But as a result of contamination, half of the hemophiliacs who used the products from 1978 through 1984 were infected with HIV.

Both Alpha and Armour are part of the $650 million global settlement to HIV-positive hemophiliacs by pharmaceutical companies that made the concentrates. *In re Factor VIII or IX Concentrate Blood Products,* MDL 986 (N.D. Ill.)

The two teenage plaintiffs in the Houston action, Blaine Howray and Byron Brown, had been diagnosed as HIV-positive in 1985; each had opted out of the global settlement to pursue individual claims. They acknowledged that AIDS was unknown when the concentrates

were first on the market. But in the early 1970s, people did know that hepatitis could be transmitted by these products, Mr. Beck says. A heat treatment tested by Alpha, approved by the FDA in early 1984, killed hepatitis and killed the AIDS virus by accident. The plaintiffs claimed that if Alpha acted earlier to fight hepatitis, they could have prevented AIDS, Mr. Beck adds.

No More Than Three Points

To simplify the case, Mr. Beck established three points: I stress with the people working with me that if you want the jury to remember more than three things, they have to rhyme.

My first point was that Alpha was not negligent, Mr. Beck says. When the company first learned of the connection between the HIV virus and its blood products, Alpha went beyond doctors' recommendations, and took aggressive actions to end contamination.

The second point was that Alpha always worked hard to improve quality. It was important for us to show that throughout the years that Alpha was taking lots of different steps to improve the product.

The third point acknowledged that it was a horrible tragedy, but that you can't blame Alpha for preventing a disease no one ever heard of.

To convey these points, Mr. Beck developed a visual presentation. The way to tell a convincing story is with a heavy use of visuals and graphic evidence. The second point, demonstrating how Alpha worked to improve quality, was particularly challenging, he says. You have to make it simple enough for the jury to understand, but you also have to communicate how difficult the process is.

To explain the process of making blood concentrates and to itemize each improvement, Mr. Beck developed a large magnetic board with 12 by 12 refrigerator magnets. On these magnets were graphic drawings of the steps Alpha followed to produce the blood products. I worked longer on these than on any other part of the case, he notes.

Mr. Beck worked with a graphic designer and an Alpha scientist to develop the magnets, which were used to great effect during the scientist's testimony.

Mr. Beck also produced a 1970-85 timeline covering what the world knew about AIDS and hemophiliacs. The time-line, which noted the different improvements in blood concentrates as well, was a more dramatic way of showing Alpha's contention that nine-tenths of those with HIV had already been infected by the time we understood the problem.

I'm a big believer in visuals, he says. People process more information visually.

Unlike many attorneys, Mr. Beck believes in a long and detailed opening statement: To a defense lawyer, the opening statement is the most important stage of a trial. It's not unusual for it to be weeks before we can tell our story. We have to set our themes in the opening or I've abandoned the field to the plaintiffs.

While he uses simple themes, he also provides a lot of detail. It's not my goal for the jurors to remember every detail. You give the jury a framework for processing the information, so they will process it in a way that is consistent with your themes.

He also gears his cross-examinations towards his themes, saving an aggressive approach for witnesses who contest his view of the facts. The experts who were worldclass authorities, giving honest, straightforward answers, I treated with respect. But I went after the experts who said Alpha acted unreasonably.

One expert, for instance, was testifying about the use of heat treatment. Mr. Beck attacked the fact that he was being paid $600 an hour to testify for the plaintiff and got him to admit that he had never done any studies on the blood concentrate and knew nothing about hepatitis, and that his only involvement with the effect of heat on the blood product was the result of his litigation work.

In the courtroom, Mr. Beck uses a laptop computer connected to a small laser printer under the table. He puts his outline for his cross-examination and notes on the laptop, along with documentary evidence, including transcripts of testimony from depositions and other trials. When something a witness said didn't ring true, I did a quick word search. He would find something in the deposition then insert a note in his outline. I adapt the outline on the fly, then hit the print button and have the revised outline available for the cross.

The laptop is always in court with me, says Mr. Beck. Some lawyers tell me that jurors will think you're a big rich defense lawyer and hold it against you. But most people nowadays work with computers, and jurors appreciate when you're well-organized.

His own presentation was very brief. With the help of visual aids, he had the Alpha scientist describe making and improving blood concentrates and the medical director discuss what the medical community knew and when they knew it.

A Strong Close

The closing was emotional and dramatic. It is essential, Mr. Beck says, to take on directly the emotional part of the case. This is the kind of case that makes you cry. Anyone with a heart is going to feel sympathy. To counter this, you have to try to personalize the company, you have to put a face on the company.

The plaintiffs' counsel had attacked the Alpha medical director, Dr. Jonathan Goldsmith, Mr. Beck says, accusing him of participating in the deaths of thousands and asking him how could he sleep at night. Mr. Beck turned to that question in the last moments of his closing.

On behalf of Dr. Goldsmith, on behalf of all of the men and women from Alpha, how do we sleep at night? Here's how we do it. We lay our head down after we've spent the day doing our best with the knowledge that we have, and sometimes some of the people from Alpha wake up knowing that if they'd had better knowledge earlier they could have saved more lives, and sometimes they wake up knowing that if they or somebody else had a stroke of genius three or five or eight years earlier, then good, young men like Blaine and Byron would have been saved from the horrible misfortune that's befallen them.

But Dr. Goldsmith and the other people from Alpha and the people from Armour, they're real doctors and real scientists and they live in the real world, and they have to make decisions based on what is known to them at the time. They don't have the luxury that a plaintiffs' lawyer does of looking back 20 years later and second-guessing every decision that was made.

The plaintiffs sought $120 million in compensatories and more than $200 million in punitives. But April 3, a Houston jury returned a complete defense verdict. The plaintiffs have appealed.