

Denver  
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## Donald E. Scott

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### PROFESSIONAL PRACTICE

Bartlit Beck Herman Palenchar & Scott LLP, Founding Partner, 1993-Present

Kirkland & Ellis, Litigation Partner (Chicago, Washington, and Denver), 1973-1993

Tried cases nationwide:

Products liability (biologics; toxic torts; explosions; product defects)

Antitrust and patent law

Shareholder rights (minority shareholder claims; preferred shareholder claims; special committees)

Breaches of contract

Oil and gas unitization agreements

Insurance bad faith

Fraud in stock sales

Fraud in product sales

Corporate takeovers and federal securities law

Violations of GAAS (auditing standards) and GAAP (presentation in financial statements)

Violations of fiduciary provisions (fund management), multi-employer provisions (withdrawal liability), and pension-avoidance provisions of ERISA

### EDUCATION & HONORS

Yale Law School, 1973,  
J.D.

Editorial Board, *Yale Law Journal*

Harvard College, 1970,  
B.A., *magna cum laude*,  
economics

*Phi Beta Kappa*

### AWARDS & RECOGNITION

Fellow of the American  
College of Trial Lawyers

Fellow of the International  
Academy of Trial Lawyers

Named *BTI* "Client Service  
All Star" for 2012

Recognized in *Colorado SuperLawyers*

Recognized by National  
Law Journal for winning  
one of the "Top Ten  
Defense Verdicts of 2000."

*Parker v. NL Industries, Inc.* (Baltimore City Court)

Featured in National Law  
Journal (7/3/00) as the  
headline case for a  
complete defense verdict in  
the first case to be tried  
against former  
manufacturers of lead paint

# BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP

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## BAR ADMISSIONS

Colorado  
Illinois  
District of Columbia

## PROFESSIONAL ACTIVITIES AND COMMUNITY SERVICE

Fellow, American College  
of Trial Lawyers  
Fellow, International  
Academy of Trial Lawyers  
Instructor, National  
Institute for Trial Advocacy  
for over 30 years, including  
Master Advocates  
Sessions 1986-1992,  
National Session (Boulder,  
Colorado), Deposition  
Training (numerous cities),  
and Regional Sessions  
(Philadelphia, Denver)

## CURRENT & RECENT REPRESENTATIONS

### ***Seroquel Litigation***

Lead trial counsel for AstraZeneca in Delaware and other state court suits involving claims of diabetes due to use of Seroquel anti-psychotic medicine.

***Scaife v. AstraZeneca; Hopkins v. AstraZeneca; Jones v. AstraZeneca.*** All dismissed by court under ***Daubert***-analogue doctrine (2009-2010).

Numerous cases dismissed voluntarily by plaintiffs to avoid trial.

Cases awaiting trial in Delaware and Missouri.

### ***Vioxx Litigation***

Trial counsel for Merck in state court suits involving claims of heart attack due to use of Vioxx pain medicine.

Three cases voluntarily dismissed by plaintiffs shortly before trial in Houston and Philadelphia (2006-2007), prior to Merck's nationwide settlement.

## CASES TRIED OR OTHERWISE TAKEN TO JUDGMENT

***Thomas v. Atlantic Richfield, NL Industries, et al.*** (Circuit Court of Milwaukee, Wisconsin)

Represented NL, and acted as lead counsel for all defendants on issues of history and science, in jury trial seeking damages for a young man's alleged brain damage from eating lead paint as a child. Plaintiff alleged negligent failure to warn of lead paint hazards throughout the period 1900-1970. Complete defense verdict for NL and co-defendants in Sept-Nov 2007.

***City of Milwaukee v. NL Industries*** (Circuit Court of Milwaukee, Wisconsin)  
Represent NL in jury trial to declare lead paint throughout Milwaukee to be a public nuisance and to hold NL liable for costs of the city's childhood lead poisoning program. NL, the former National Lead Company, was alleged to have been the largest U.S. producer of lead pigment in the 20th century. Complete defense verdict for NL in May-June 2007.

***Norman Svoboda v. Bayer Corp.*** (District Court of Sanford, Florida)

***Marlus Hardy v. Bayer Corp.*** (District Court of Ogden, Utah)

Represent Bayer in suits by stroke patients for Bayer's previous use of the decongestant phenylpropanolamine (PPA) in Alka-Seltzer Plus cold medicine.

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The FDA asked companies to withdraw PPA from market in 2000 because of suspected link to hemorrhagic stroke. The plaintiffs claimed to have used Bayer's product before their strokes. Cases were tried before Utah and Florida juries in January-February 2005 and in March-April 2005. Complete defense verdicts. Mr. Scott is one of Bayer's national lead counsel in all of its PPA litigation.

***State of Rhode Island v. Lead Industries Association*** (Superior Court of Rhode Island)

Chief trial counsel for client NL Industries and seven other companies sued by Attorney General of Rhode Island. The AG seeks to declare the past sale of lead paint a "public nuisance" throughout the State of Rhode Island. Jury voted 4-2 for the defense when it deadlocked after a two-month trial in August-October 2002. Retrial from October 2005 until February 2006 resulted initially in a deadlock (4-2 for defense) and ultimately a verdict for the State. In July 2008, the Supreme Court of Rhode Island unanimously reversed the trial verdict, requiring complete dismissal of the State's lawsuit. With this victory, NL under Don's strategic and trial leadership has never lost and never settled a lead paint suit in 20 years of nationwide litigation.

***Bandag, Inc. v. Michelin*** (U.S. District Court, Davenport, Iowa)

Represent Bandag, a leading retreader of truck tires, in claims against Michelin for raiding Bandag's network of independent retread dealers. Michelin filed counterclaims for antitrust violations. Michelin sought a preliminary injunction against Bandag and alleged co-conspirator Bridgestone/Firestone to prevent them from working together in competition against Michelin. Successfully defeated preliminary injunction motion following an evidentiary hearing in April 2001. Case settled favorably to client after two weeks of jury trial in May 2002.

***Sienna Imaging, Inc. v. LNSI*** (AAA Arbitration, St. Louis, MO)

Represent Sienna in trial of its claims arising from a corporate asset purchase, based on a breach of Generally Accepted Accounting Standards and non-disclosure involving digital photographic processing systems. Case won. Arbitration damage award entered for client in December 2000.

***Tyrone Parker v. NL Industries, Inc., et al.*** (Circuit Court of Baltimore City, Maryland)

Represent NL Industries in jury trial for products liability resulting from sale of lead paint products in 1950's. This was the first case in the nation to be tried against any of the former manufacturers of lead paint products. Scores of cases have previously been dismissed on motions, and numerous other cases alleging lead paint poisoning or property damage are pending throughout the country. The plaintiff alleged that his current condition of epilepsy results from latent injuries caused when he ingested lead paint in the 1950's. He was treated at the University of Maryland Hospital and diagnosed with lead encephalopathy. He subsequently experienced cognitive delays, difficulties in school, and behavioral problems all as the alleged result of lead poisoning. Case won. The case was tried before a Baltimore City jury from May 30 to June 12, 2000 before Judge Heller. Complete defense verdict on June 12, 2000.

***W.E.A. Smith, et al. v. Alpha Therapeutics, et al.*** (Civil District Court of Orleans Parish, Louisiana)

Represent Alpha Therapeutics in six products liability suits arising from sale of blood-clotting medicine to hemophiliacs during early years of the AIDS epidemic. Many hemophiliacs contracted the AIDS virus from their clotting medicine. Case won. The issue of prescription (statute of limitations) was tried in all cases during Sept-Nov 1999 before Judge Tobias. Defense judgment in July 2000.

***United Technologies Pratt & Whitney v. Chromalloy Gas Turbine*** (U.S. District Court, Delaware)

Represent Pratt & Whitney (manufacturer of jet engines) in suit for patent infringement and breach of contract by engine-repair company. Chromalloy counterclaimed to compel Pratt to give it licenses for new generation of jet engine technology. Judge divided case into phases. Chromalloy conceded all scheduled issues just before the first two trial dates. The first principal counterclaim tried in December 1997 before Judge McKelvie. Non-jury decision for Chromalloy on principal counterclaim for rights to use Pratt's new technologies. Case won for client in Federal Circuit, where appellate court reversed the decision in its entirety. The second principal counterclaim tried in July 1998 before Judge McKelvie. Case won for client in June 2000.

***Chromalloy Gas Turbine v. United Technologies Pratt & Whitney*** (District Court of Bexar County, Texas)

Represent Pratt & Whitney in antitrust suit brought by world's largest independent engine-repair company for alleged monopolization. Chromalloy sought \$600 million in trebled damages. Jury trial for 3-½ months in August-November 1996. Case won. Jury verdict for Pratt & Whitney allowing no damages. Judge denied Chromalloy's post-trial motion for injunction. (Judge Specia) Judgment affirmed on appeal.

***Koch v. Koch Industries*** (U.S. District Court, Wichita, Kan.)

Represent Bill Koch (winner of the 1992 America's Cup) in billion-dollar dispute over the 1983 sale of stock in Koch Industries of Wichita, an integrated oil company. The case involves alleged accounting deceptions, violations of GAAP, and misrepresentations of value of a refinery, oil reserves, and real estate. The case was tried in summer 1998 (Judge Crow). Jury verdict for the defendants. The jury determined that the defendants had committed misrepresentations but that the misrepresentations were immaterial. Judgment affirmed on appeal.

***In re MAXXAM Shareholders Securities Litigation*** (Delaware Court of Chancery)

Represent NL Industries and Dallas investor Harold Simmons in shareholder derivative claims against Houston investor Charles Hurwitz. Clients are the largest public shareholders in Hurwitz's company MAXXAM (which owns of Kaiser Aluminum). MAXXAM loaned \$34 million to a 100%-owned Hurwitz company for real estate development near Palm Springs, California. The 100%-owned Hurwitz company took the profits, and the partly-owned MAXXAM took the losses. Case tried in January 1996 before Vice Chancellor Jacobs. Case won. Decision for client plaintiffs. \$20 million post-decision settlement.

***Kahn v. Tremont Corporation*** (Delaware Court of Chancery)

Represent Dallas investor Harold Simmons whose company, Valhi, controls Tremont. Tremont is the world's largest integrated manufacturer of titanium metals ("TIMET"). This shareholder derivative suit challenges Valhi's sale to Tremont of \$92 million of stock in another company. The stock price fell after the sale to 1/3 of the

purchase price. Case tried in May-June 1995 before Chancellor Allen. Case won. Decision in favor of clients (defendants) on all claims. Decision reversed and remanded by the Delaware Supreme Court. The case settled after one day of trial on remand.

***Sutrak v. Carrier*** (U.S. District Court, Denver)

Represented Carrier in antitrust and patent-infringement case alleging monopolization of bus air conditioning and infringement of competitor's patent. Partial summary judgment granted in Carrier's favor in October 1993, dismissing the antitrust claim (monopoly leveraging, attempt, and monopolization). Patent and federal anti-dumping claims tried to a jury in April-May 1995. (Judge Kane) Case won. Jury verdict for Carrier.

***Schneider USA v. Cordis*** (U.S. District Court, Minneapolis)

Represented Cordis in defending patent infringement claim. The patent covers a "soft tip" affixed to catheters used in angiography and angioplasty for diagnosing and clearing blocked coronary arteries. Jury trial in September 1995, with Fred Bartlit. Parties settled with worldwide patent cross-licenses favorable to Cordis (terms previously refused by opponent) after jury selection and opening statements. (Judge Rosenbaum)

***Langley v. Pratt & Whitney Canada*** (Golden, Colo. District Court)

Represented Pratt & Whitney Canada and United Technologies in fraud and defect case concerning Pratt's JT15D jet engines. The JT15D engine is one of the most popular small jet engines in service, powering the Cessna Citation and other business and military jets. Tried to a jury in 1993. (Judge Zimmerman). Case won. Jury verdict for Pratt and UTC.

***Walter v. Phillips 66*** (U.S. District Court, Denver)

Represented Phillips in a case filed by family burned in a home propane gas explosion. Two children and father were permanently disfigured. Phillips made the odorizing agent (ethyl mercaptan) added to propane so people can smell a gas leak. The suit claimed that the odorant failed because of defect, the gas was undetected, and that warnings were inadequate. Tried to jury in 1992 after other defendants had settled. Comparative fault verdict of 4% liability against Phillips. Judgment was less than 1/4 of client's offer of judgment before trial, and less than 1/10 of plaintiffs' last settlement demand.

***McLendon v. Continental Group*** (U.S. District Court, Newark, N.J.)

Represented Peter Kiewit Sons in damages phase of an ERISA class suit against Kiewit subsidiary, Continental Can, for firing of older workers about to vest for their pensions. The merits phase of case had already been lost by prior counsel. Damages exceeding \$1 billion and RICO treble damages sought. Four damages trials occurred through 1990 before a special master. Case settled in December 1990.

***Stanley v. Motors Insurance Corp.*** (California Superior Court)

Represented Motors Insurance Corporation, a subsidiary of General Motors, in a bad-faith suit brought by the insured after an auto accident. High punitive damages were requested. Case won. Tried to a jury for six weeks in 1989. Verdict for defense after phase one of bifurcated trial. The court of appeals affirmed.

***Prudhoe Bay Equity Litigation*** (Delaware Court of Chancery; California Superior Court)

Represented Phillips Petroleum, Mobil Oil, and Chevron USA as plaintiffs in litigation to determine final ownership interests in the Prudhoe Bay Unit on the North Slope of Alaska. \$1 billion of oil and gas rights initially at stake. Secured from the California courts an unprecedented stay of arbitration order, adverse to clients, while litigating contract and fiduciary breaches in Delaware. 10-week trial in 1988 and 1989 against Exxon, ARCO, and BP/Sohio in Delaware before Vice Chancellor Jacobs. Case settled favorably to clients while awaiting Delaware court decision.

***Sandoval v. Simmons*** (U.S. District Court, Peoria, Ill.)

Represented Harold Simmons against claims by a bank and by the United Auto Workers under ERISA. Bank and union alleged breach of fiduciary duty for client's investing pension assets as part of corporate control contests. Liability trial before Judge Mihm in February 1985. Liability lost under new controlling appellate decision. Series of damages hearings. Rulings favored client. Case settled favorably to client.

***Medford v. Simmons*** (U.S. District Court, Portland, Ore.)

Represented Harold Simmons and Amalgamated Sugar in tender offer litigation. Amalgamated was seeking control of Medford, a timber company. Preliminary injunction hearings in 1984 before Judge Redden in Portland. Settled after hearing. Client successfully acquired Medford.

***Robinson v. T.I.M.E.-DC*** (U.S. District Court, Lubbock, Texas)

Represented TIME-DC, a trucking company, and its directors against shareholder derivative suit. Preferred shareholders challenged a spin-off of stock to common shareholders as dividend. Trial in 1983 before Judge Woodward. Case won.

***T.I.M.E.-DC v. Teamsters Funds*** (U.S. District Court, Brooklyn; Albany, NY)

Represented TIME-DC in its suits to enjoin the Teamsters Union pension funds from putting client out of business during a labor dispute. Cases under multi-employer provisions of ERISA. Depositions of Teamsters bosses of New York and New Jersey, including Provenzano family of North Jersey. Preliminary injunction hearings in 1983-84 before Judge Miner (N.D.N.Y.) and Judge McLaughlin (E.D.N.Y.) of the Eastern District of New York in Brooklyn. All cases won.

***Baum v. Southwest Louisiana Land Company*** (U.S. District Court, New Orleans)

Represented directors of Southwest, a company controlled by Harold Simmons, against shareholder derivative claims. Plaintiffs challenged loans and management contracts between the controlled companies. Jury trial in 1981 before Judge Carr. Case won.

***Gray Drug Stores v. Harold Simmons*** (U.S. District Court, Cleveland)

Represented the offerors in takeover litigation for control of Gray Drug Stores. Preliminary injunction hearing in 1981 before Judge Lambros. Case won. Client lost takeover target in the market.

# BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP

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**Shamos v. Levy** (U.S. District Court, Denver)

Represented defendants in action by bankruptcy trustee for fraudulent conveyances of property to the bankrupt's children. Trial in 1982 before Judge Moore. Case lost.

## NEWS

Chambers USA 2011 Client's Guide Places Bartlit Beck Attorneys at the Top

Chambers USA 2010 Client's Guide Places Bartlit Beck Attorneys at the Top

After 20 Years, Don Scott Still Undefeated in Lead Paint Cases

Bartlit Beck and Kirkland & Ellis Win Wisconsin's First Lead Paint Personal Injury Case

Bartlit Beck Aids RealNetworks in Securing \$761 Million Settlement With Microsoft

Chambers USA 2005 Client's Guide Places Bartlit Beck Attorneys at the Top

Don Scott Wins Bayer Case - Standard-Examiner

First Trial Against Lead Paint Manufacturers Ends in Defense Verdict

The Defense Gets the Lead Out

Diamonds Are This Firm's Best Friend

## BIG WINS

Bartlit Beck Wins Two High-Profile Pharmaceutical Cases for Bayer Corp., *Hardy v. Bayer & Svoboda v. Bayer* (2005)

Don Scott Wins the First Lead Paint Products Liability Case to go to Trial, *Parker v. NL Industries* (2000)

Bartlit Beck Defeats Antitrust Challenge to Pratt & Whitney, *Chromalloy v. United Technologies* (1996)

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