

## Toxic Tort Cases

Bartlit Beck has represented clients in toxic tort cases involving chemicals such as lead and asbestos and pharmaceutical products such as Vioxx and Alka Seltzer. Bartlit Beck has won most of the toxic tort cases it has tried, and also has prevailed before trial through dispositive motions or favorable settlements.

In litigation involving lead, Bartlit Beck has successfully tried cases brought by state and local governments alleging public nuisances from lead paint, personal injury cases alleging injuries from the ingestion of residential lead paint and a class action brought by neighboring residents alleging exposure to emissions from a lead smelter.

In pharmaceutical litigation, Bartlit Beck has successfully represented a number of drug manufacturers including Merck (Vioxx), Bayer (Alka Seltzer), AstraZeneca (Seroquel) and Alpha Therapeutic (blood factor concentrate).

Other examples of toxic tort litigation in which Bartlit Beck has been involved include mass tort cases arising from alleged exposure to asbestos, coal dust and chemicals in blasting caps.

**Below are summaries of some of the representative toxic tort cases we have handled.**

### Lead litigation

#### ***State of Rhode Island v. Lead Industries Association***

Chief trial counsel for client NL Industries and seven other companies sued by Attorney General of Rhode Island. The AG sought 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.

#### ***City of Milwaukee v. NL Industries***

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.

## ***Spring Branch Independent School District v. NL Industries, Inc., et al.***

Represented NL in a suit brought by the Spring Branch School District in Houston, Texas. This was the first of several suits brought by school districts in Texas seeking recovery of costs in replacing surfaces coated with lead-based paint. Bartlit Beck prepared successful motion for summary judgment regarding product identification and causation. The Texas intermediate appellate court affirmed summary judgment. Following this summary judgment victory, the school districts in all of the remaining cases in Texas voluntarily dismissed their cases.

## ***Thomas v. Atlantic Richfield, NL Industries, et al.***

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.

## ***Wagner v. NL Industries***

Class action on behalf of 7,500 neighborhood residents seeking several hundred million dollars in personal injury and property damages due to emissions of lead from factory over a thirty-five year period. Represented defendant NL Industries. Jury verdict for NL on all issues following ten-week trial.

## **Pharmaceutical Litigation**

### ***Vioxx Litigation***

Represented defendant Merck in various cases alleging heart attacks and other personal injuries by users of Vioxx, including:

- ***Plunkett v. Merck:*** Represented Merck in first federal Vioxx trial since Merck withdrew Vioxx from the market. Plaintiff alleged Vioxx caused decedent's heart attack and death. Two week jury trial in New Orleans Federal Court (MDL) resulted in unanimous jury verdict for Merck.
- ***Smith v. Merck:*** Represented Merck in the third federal Vioxx trial since Merck withdrew Vioxx from the market. After a two-and-a-half week trial in New Orleans Federal Court (MDL), the jury deliberated for less than three hours before returning a complete defense verdict for Merck.
- ***Dedrick v. Merck:*** Represented Merck in the fifth federal Vioxx trial since Merck withdrew Vioxx from the market. Two-and-a-half week jury trial in New Orleans Federal Court (MDL). After 90 minutes of deliberation, jury returned a complete verdict for Merck.

## ***Alka Seltzer Litigation***

Represented Bayer in personal injury cases alleging that Alka Seltzer Plus caused strokes, including jury verdicts in Bayer's favor in *Svoboda v. Bayer Corp.* (Florida state court), and *Hardy v. Bayer Corp.* (Utah state court).

## ***Seroquel Litigation***

Currently representing defendant AstraZeneca in various cases alleging personal injuries by users of Seroquel.

## ***Blood Factor Concentrate Litigation***

Defended Alpha in a nation-wide series of lawsuits involving claims of AIDS transmission to hemophiliacs through blood factor concentrate marketed by Alpha and other fractionators and used by hemophiliacs to control bleeding.

Defending Bayer Corporation in an attempted world-wide class action brought by hemophiliacs residing outside the United States who claim to have been infected with HIV and HCV from Bayer's and other defendants' blood products.

## **Other Toxic Tort Litigation**

### ***Naftali, et al. v. DuPont***

Represented DuPont in ten-week jury trial of personal injury, medical monitoring, and punitive damages claims of ten plaintiffs. Lawsuit brought by 1600 plaintiffs alleging community-wide environmental contamination by DuPont blasting cap plant over 90 years. Court dismissed punitive damages claims at close of evidence. Jury awarded no damages to 7 of 10 trial plaintiffs. Jury verdict for 3 plaintiffs of damages totaling less than \$500,000.

### ***West Virginia v. 3M***

Bartlit Beck is representing 3M in a lawsuit brought by West Virginia's Attorney General seeking hundreds of millions of dollars in reimbursement of workers' compensation payments to thousands of coal miners and other West Virginia workers.

### ***Perrine v. DuPont***

Represented DuPont in seven-week state court jury trial of toxic tort claims brought by a class of West Virginia residents. Class claims related to alleged smelter emissions over a century-long period. Jury verdict for plaintiffs. Appeal proceedings pending.

# BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP

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## ***In re Asbestos IV***

Represented NL Industries in mass asbestos litigation in Kanawha County Circuit Court, West Virginia. Cases settled favorably during trial.

## ***Agnes, et al. v. DuPont***

Represented DuPont in toxic tort action brought by 500 plaintiffs in New Jersey. Case settled favorably.

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