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DEFENSE WINS OF 2003

NINE CASES IN WHICH THE ART OF DEFENSE PREVAILED

Parachuting into a job to tackle a high-profile foe

CASE TYPE: Products liability

CASE: *Haltom v. Bayer Corp.*, No. 02-60154-4 (Nueces Co., Texas, Dist. Ct.)

PLAINTIFF'S ATTORNEYS: Mikal Watts and Chris Pinedo of the Watts Law Firm, Corpus Christi, Texas; and Rickey Brantley of Jose, Henry, Brantley & Keltner of Fort Worth, Texas

DEFENSE ATTORNEYS: Philip Beck of Bartlit Beck Herman Palenchar & Scott LLP of Chicago; and Gerry Lowry of Fulbright & Jaworski of Houston

JURY VERDICT: For the defense

PHILIP BECK DIDN'T expect to be defending drug maker Bayer Corp. against charges that its recalled cholesterol-lowering drug, Baycol, caused an elderly patient's degenerative muscle disorder.

The attorney originally handling that case, however, had a father who was gravely ill, and another trial Beck was preparing for had been postponed. So he headed to Corpus Christi, Texas, considered a pro-plaintiff locale, to face high-profile attorney Mikal Watts on Watts' home turf.

"Basically, it was kind of like parachuting in with a week or 10 days' notice and trying this case with all the publicity surrounding it," said Beck of Chicago's Bartlit Beck Herman Palenchar & Scott.

The publicity stemmed from the fact that the Baycol case filed by Hollis Haltom, 82, was the first to go to trial.

Bayer had voluntarily withdrawn the drug from the U.S. market in 2001 after users complained that one of its side effects was a condition called rhabdomyolysis, which causes muscle degeneration or paralysis. Plaintiffs'

attorneys claimed 100 deaths had been linked to the drug.

Bayer's policy had been to settle claims, and it tried that approach with Haltom, who began using the drug three months before the recall. Bayer offered him \$250,000. Watts wouldn't settle unless Bayer resolved all 1,500 of his Baycol cases, Beck said. Bayer refused. That impasse brought the case to trial.

The plaintiff's attorneys built their case on company memos and documents that appeared to echo concerns about Baycol's safety. They claimed Bayer knew the drug was dangerous at the dosage level Haltom received and that its warning labels were inadequate.

Beck's strategy entailed having company officials "patiently and laboriously" explain to the jury the context of scores of



PHILIP BECK: *The jury heard patient, laborious explanations.*

company documents introduced by the plaintiffs. "It was largely a case of [the plaintiffs] taking snippets of documents and misrepresenting them," he said.

Following 2 1/2 days of deliberations, jurors rejected Watts' request for more than \$550 million in damages. Plaintiff's attorney Chris Pinedo said the verdict surprised him because

Bayer admitted its drug caused Haltom's injuries. "The jury somehow got confused on the issues," said Pinedo of the Watts Law Firm.

That verdict will not be appealed, but Pinedo said Haltom has a case pending against Bayer A.G., Bayer's parent, and GlaxoSmithKline PLC, which helped promote Baycol and provided Haltom's doctor with samples. Beck credited the *Haltom* victory and another win in Mississippi last spring with prompting plaintiffs' lawyers to settle. About 2,000 Baycol cases have been resolved confidentially since Haltom's March 2003 verdict. Another 10,000 are pending.

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