

## GENERAL COMMERCIAL LITIGATION



Bartlit Beck has an extraordinary record of success representing clients in high-stakes commercial litigation matters in mediations, arbitrations, and in state and federal courts across the country. We handle cases involving all areas of commercial litigation, including breach of contract, tortious interference with contract, breach of fiduciary duty, defamation/libel, acquisition-related issues, unfair trade practices, environmental issues, insurance coverage, environmental liability, consumer litigation, and class actions. Our commercial litigation clients span a broad spectrum of industries, including aerospace, agriculture, automotive, consumer products, financial services, healthcare, higher education, insurance, oil and gas, real estate, pharmaceuticals, and technology.

Our focus on and preparation for trial places clients in a position of strength – enabling us to try the case if necessary but also leverage our readiness to obtain a beneficial settlement.

### EXPERIENCE

#### ***Opioids Litigation***

Represent Walgreens in nationwide litigation relating to the distribution and sale of prescription opioid medications, including over 1,000 cases brought by states, cities, counties, tribes, and private parties seeking recovery in connection with the opioid abuse crisis. MDL in the N.D. Ohio and a large number of related state-court cases. Serve as liaison counsel for all chain pharmacy defendants in the MDL.

#### ***Climate Change Litigation***

Represent ConocoPhillips in multiple public nuisance cases filed by cities, counties, and the State of Rhode Island related to climate change. ConocoPhillips has successfully obtained dismissal of three such cases thus far and those rulings are on appeal.

#### ***Roundup® Litigation***

Represent Monsanto and Bayer defending the Roundup® products liability litigation. Plaintiffs allege personal injuries, including non-Hodgkin's lymphoma, caused by Roundup® herbicide. The MDL is pending in the N.D. California, with state-court proceedings pending in Missouri, California, and other states.

#### ***United States v. United Technologies***

Represented United Technologies in ten-week bench trial of False Claims Act case brought by the Department of Justice. Government sought \$624 million, alleging price inflation on jet engine sales by UTC division Pratt &

Whitney to the Air Force. Trial court's judgment rejected the government's \$624 million damages claim, held that the government suffered no actual damages, and imposed statutory penalties of \$7 million. UTC appealed after a subsequent remand ruling in which the district court reversed its trial ruling and awarded \$664 million. The Sixth Circuit reversed the damages award, held that the government had suffered no actual damages, and remanded to the trial court again. On the second remand, the government finally abandoned its \$600 million damages theory, and the trial court entered final judgment of \$1.2 million with interest of \$2.8 million (plus the \$7.1 million penalty).

### ***In re Whirlpool Corp. Front-Loading Washer Products Liability Litigation***

Represented Whirlpool in N.D. Ohio bellwether consumer class action trial of plaintiffs' claims of design defect and breach of implied warranty. After four-week jury trial, jury deliberated fewer than two hours before returning complete defense verdict.

### ***Metropolitan Mortgage & Securities Litigation***

Represented Ernst & Young in federal securities class action suit and related arbitrations surrounding the collapse and bankruptcy of Metropolitan Mortgage & Securities Co., a \$2 billion investment, real estate and insurance conglomerate. Plaintiffs alleged accountants' negligence relating to audit work. Won back-to-back complete defense verdicts in separate trials involving claims for hundreds of millions in investment losses brought by Metropolitan's insurance subsidiary and the bankrupt estate. Class action case settled favorably shortly before trial.

### ***TicoFrut v. DuPont***

Represented DuPont in Miami state jury trial of product liability claims involving the fungicide Benlate®. TicoFrut, the main citrus grower and processor in Costa Rica, sued DuPont claiming that Benlate® hurt the production of orange trees in Costa Rica. TicoFrut sought \$172 million in compensatory damages and an undisclosed amount of punitive damages. After six-week trial, jury deliberated five hours before returning a verdict for DuPont.

### ***Behrens, et al. v. Arconic***

Represent Arconic in wrongful death and products liability mass action brought in E.D. Pennsylvania by 247 plaintiffs and their estates seeking damages arising out of the 2017 Grenfell Tower fire in London. Plaintiffs allege cladding panels made by Arconic's French subsidiary contributed to the rapid spread of the fire. Successfully removed the case to federal court.

### ***U.S. Airways v. Sabre***

Represent Sabre in antitrust action in S.D. New York relating to contract between U.S. Airways and Sabre concerning Sabre's Global Distribution System. Won motions to dismiss monopolization and declaratory judgment claims. Won summary judgment on claim for injunctive relief and on damages representing a reduction of over 75% of plaintiff's damages claim. Won \$6 million costs/attorneys' fees award. Two-month jury trial resulting in defense verdict on one claim and damages of 1% of what plaintiff had sought on second claim. Also won denial of declaratory and injunctive relief. The Second Circuit subsequently vacated the jury's liability finding and remanded the case for a new trial.

### ***Adinolfi, et al. v. Pratt & Whitney***

Represent Pratt & Whitney in environmental tort cases in S.D. Florida involving more than \$1 billion in alleged property damage and personal injury claims arising out of the declaration of a "cancer cluster" in a neighborhood near Pratt & Whitney's West Palm Beach facility. Defeated class certification (and excluded plaintiffs' main expert) after a five-day evidentiary hearing. Won summary judgment for two of the twenty-one related personal injury cases. The others have been stayed while the summary judgment orders are being appealed in the Eleventh Circuit. Bartlit Beck is serving as appellate counsel.

### ***Pelvic Mesh Product Liability Litigation***

Represent Ethicon / Johnson & Johnson in defense of lawsuits alleging personal injuries caused by pelvic mesh medical devices. Designated trial counsel in a number of matters set for trial, both in state court and in federal cases remanded by the MDL court for trials around the country. In this capacity, served as lead trial counsel and secured a complete defense verdict after a three-week jury trial in the Philadelphia Court of Common Pleas.

### ***EEOC v. FedEx Ground***

Represented FedEx Ground in an enforcement action brought by the EEOC under the Americans With Disabilities Act. EEOC filed claims on behalf of roughly 300 deaf FedEx Ground package handlers from dozens of facilities around the country, alleging that FedEx Ground failed to provide a variety of reasonable accommodations to these employees, such as ASL interpreters at meetings. Bartlit Beck was brought in to take over the matter after nearly a decade of investigation, conciliation, and litigation with EEOC. Along with a team of lawyers from three different firms, Bartlit Beck crafted a strategy that led to a favorable settlement in May 2020, prior to a single deposition being taken.

### ***Baycol® Litigation***

Represented Bayer in product liability suits alleging that Bayer's drug Baycol® caused a rare muscle disorder. Bayer faced tens of thousands of claims in a federal MDL and in individual state cases. Won a critical defense verdict in the first bellwether case where plaintiff sought \$560 million.

### ***PFOA/PFAS Litigation***

Lead national counsel for DuPont on claims that its 2015 spin-off of The Chemours Company was a fraudulent transfer. Handle those claims in the aqueous film-forming foam multi-district litigation in the District of South Carolina as well as cases in California, Louisiana, New Hampshire, New Jersey, New York, Ohio, Tennessee, Texas, and Vermont.

### ***Elliott Associates, L.P., et al. v. AbbVie Inc.***

Represent various investment funds in fraud actions in circuit court in Chicago arising from AbbVie's aborted \$50 billion acquisition of Shire in 2014.

### ***Gadeco v. Grynberg***

Represent shareholders and board members of privately held oil and gas companies in jury trial in district court in Arapahoe County, Colorado involving claims for breach of contract and breach of fiduciary duty brought by the founder following his removal as President and Chairman. Plaintiff sought injunctive relief and \$800 million in damages. After two-week jury trial, won a complete defense verdict for our clients. Case currently on appeal

to the Colorado Court of Appeals.

### ***Meso Scale Diagnostics v. Roche Diagnostics***

Represented Meso Scale, the maker of medical diagnostic equipment, in a patent infringement case in D. Delaware. After a six-day trial and fewer than two hours of deliberation, jury returned verdict of \$137 million, finding that Roche willfully infringed all of the asserted Meso Scale patents.

### ***Grynberg v. Grynberg***

Represent defendants in bench trial involving equitable claims for unjust enrichment and *quantum meruit* brought by the founder of a group of privately held oil and gas companies. Plaintiff sought \$400 million. Won complete victory. Case currently on appeal to the Colorado Court of Appeals.

### ***FDIC & ColonialBancGroup v. PwC***

Represented PwC against Colonial Bank and the FDIC in a suit filed in M.D. Alabama after the collapse of PwC's audit client Colonial Bank. Colonial Bank sought several hundred million dollars in damages. FDIC sought over \$2 billion in actual damages, plus unspecified punitive damages. Following a bench trial on liability, court ruled for PwC on the entirety of Colonial Bank's claim. Court ruled against PwC on some of FDIC's claims and in favor of PwC on others. Court also ruled in favor of PwC on FDIC's request for punitive damages. Following a bench trial on damages, court awarded FDIC \$625 million. Before judgment was entered, and while post-trial motions were pending, the parties settled the case for \$335 million.

### ***Sikorsky Aircraft Corporation v. United States***

Represented Sikorsky in two related actions by the Department of Justice in which the government asserted claims of more than \$100 million. Government alleged that Sikorsky overcharged for military aircraft and parts in violation of government contracts and Cost Accounting Standards. Won first trial and affirmed on appeal. In the follow-on related action, won motion for judgment on the pleadings, dismissing government's claims and awarding Sikorsky costs.

### ***Louisiana Land Loss Cases***

Represent ConocoPhillips in over twenty cases brought by Parishes throughout Louisiana, suing on their own behalf and on behalf of the State. The cases allege coastal land loss as a result of claimed violations of the Coastal Zone Management Act of 1978 and seek, as a remedy, restoration of coastal lands throughout Southern Louisiana. Claimed damages are billions of dollars.

### ***The Thomas L. Pearson Family Members Foundation v. University of Chicago***

Represent the University in a breach of contract lawsuit in the N.D. Oklahoma brought by donors of a \$100 million grant seeking to revoke the contribution.

### ***Trinity ET Plus Litigation***

Represent Trinity Industries and Trinity Highway Products nationwide in cases alleging personal injuries from Trinity's ET Plus guardrail end terminal system. The matters include class actions, state *qui tam* actions, and products liability cases pending in multiple state and federal jurisdictions.

***Rauner v. Kirkpatrick (Confidential AAA Arbitration) and Kirkpatrick v. Rauner***

Represented Bruce Rauner (former Illinois Governor and former managing partner of private equity firm GTCR) in arbitration related to investment as limited partner in private equity fund. Dispute centered on whether general partner breached fiduciary duties. Tried to a final, confidential arbitral award. Kirkpatrick attempted to litigate a portion of the dispute in the Cook County Circuit Court, but we successfully moved to compel arbitration.

***Massachusetts Mutual Life Ins. Co. Residential Mortgage-Backed Securities Litigation***

Represented MassMutual in actions in D. Massachusetts under the Massachusetts Uniform Securities Act, against underwriters Credit Suisse and Goldman Sachs, arising from their sales of residential mortgage-backed securities to MassMutual. Credit Suisse settled after four weeks of trial, taking an additional \$79.5 million charge to earnings because of the settlement payment. Goldman Sachs settled shortly thereafter.

***DuPont v. Unifrax***

Represented DuPont in a patent infringement matter in D. Delaware relating to DuPont's patent covering thermal acoustic blankets for use in commercial aircraft. Won jury verdict of validity and infringement. Won damages and a permanent injunction preventing Unifrax from selling its infringing product. Affirmed on appeal.

***Gillette v. ShaveLogic***

Represented ShaveLogic and individually-named defendants in Massachusetts state court, who were accused of misappropriating trade secrets and confidential information from Gillette. ShaveLogic counterclaimed for tortious interference. Won summary judgment, dismissing all Gillette's claims with prejudice. Won denial of Gillette's motion for summary judgment on ShaveLogic's counterclaims. Case settled thereafter.

***Foreign Trade Corp. v. Otter Products***

Represented OtterBox in D. Colorado cases brought by former distributors alleging antitrust, trade secret misappropriation, and Lanham Act violations. Plaintiffs sought approximately \$100 million in damages. Won motion to dismiss all antitrust claims. Favorable settlement of remaining claims immediately before trial.

***EEOC v. Texas Roadhouse***

Represented Texas Roadhouse in landmark pattern or practice age discrimination claim brought by EEOC. After three-week jury trial in the D. Massachusetts, case ended in a mistrial because jury was deadlocked after deliberating for one week. Case settled prior to retrial.

***Confidential Arbitration***

Represented a Fortune 100 client in arbitration of a multibillion-dollar contract dispute. The confidential, two-week arbitration hearing in Phoenix included testimony from numerous senior executives and expert witnesses. Panel rendered complete victory for our client.

***Milo & Gabby v. Amazon.com***

Represented Amazon in patent and copyright infringement case in W.D. Washington. Case concerned whether Amazon was liable for infringement when third-party sellers offer and sell infringing products on Amazon.com. Won summary judgment on copyright infringement. Won jury verdict on patent infringement. Affirmed on appeal.

### ***Gordon, et al. v. Sabre***

Represented Sabre in S.D.N.Y. case brought as putative antitrust class action by purchasers of airline tickets. Plaintiffs claimed Sabre conspired with its competitor "global distribution services" operators, Amadeus and Travelport, to require certain terms in their contracts with airlines, which allegedly caused plaintiffs to overpay for their airline tickets. Won a motion to dismiss 100% of plaintiffs' claimed damages. Defeated class certification. Achieved individual settlements with the handful of former class representatives.

### ***In re Teflon® Product Liability Litigation***

Represented DuPont in an MDL in S.D. Iowa comprised of twenty-three alleged class actions brought on behalf of consumers who claimed to have purchased cookware coated with Teflon® and other non-stick coatings manufactured by DuPont. Class certification denied in all matters. Affirmed on appeal. Cases voluntarily dismissed with prejudice.

### ***Applied Medical Resources Corp. v. United States Surgical***

Represented U.S. Surgical in C.D. California in patent infringement suit. Applied Medical alleged that U.S. Surgical infringed a medical device patent and sought up to \$300 million in damages and an injunction. Won non-infringement jury verdict after five-week trial.

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

Represented NL in Milwaukee circuit court suit seeking a declaration that lead paint throughout Milwaukee was a public nuisance and seeking to hold NL liable for costs of the city's lead poisoning program. Won complete defense verdict for NL.

### ***Rago, et al. v. Federal Signal***

Represented Federal Signal in five-week jury trial in circuit court in Chicago of product liability claims brought by twenty-seven Chicago firefighters. Plaintiffs alleged that Federal Signal sirens caused permanent hearing loss. Jury verdict for Federal Signal on all claims of all plaintiffs.

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

Represented DuPont in ten-week Miami jury trial of product liability claims involving Benlate fungicide. Plaintiffs, twenty-seven Costa Rican farms, claimed \$396 million in damages. Trial court entered directed verdicts for DuPont on all claims of the largest plaintiffs (constituting 60% of plaintiffs' total claimed damages). Jury awarded other plaintiffs a small fraction of amounts sought. Florida court of appeals (1) affirmed directed verdicts for DuPont on claims of the largest plaintiffs, and (2) reversed all jury verdicts for other plaintiffs due to numerous trial court errors.

### ***Vioxx® Litigation***

Represented Merck in product liability suits alleging that Merck's drug® caused heart attacks and strokes. Merck lost its first handful of jury trials awarding hundreds of millions of dollars. In the federal MDL in New Orleans, Merck was facing five bellwether jury trials in less than twelve months. Merck retained us to try the federal cases. We tried all five cases, winning outright defense verdicts in four of five trials. These results were widely credited with making possible the eventual settlement of tens of thousands of claims.

### ***Rolls-Royce PLC v. United Technologies***

Represented United Technologies and its Pratt & Whitney division in a multibillion-dollar patent case that Rolls-Royce brought in E.D. Virginia. Rolls-Royce sought almost \$4 billion (before trebling) in damages and an injunction preventing further sales of the accused engines. Court struck Rolls-Royce's damages theory and also granted summary judgment in United Technologies' favor finding that United Technologies' engine did not infringe the Rolls-Royce patent.

### ***Spirit AeroSystems v. Boeing***

Represented Spirit AeroSystems in Washington state court in \$365 million breach of contract dispute with Boeing relating to Boeing's underpayments and certain warranty claims associated with parts Spirit manufactured for Boeing aircraft. Shortly after Spirit defeated Boeing's motion to dismiss, the parties settled and resolved most of the claims, and agreed to dismiss the suit.

### ***Yukos v. Feldman***

Represent plaintiff trustee affiliated with charitable trusts formed to compensate stockholders of the former Yukos Oil Company (which was improperly nationalized by the Russian Federation) in a jury trial in S.D.N.Y. involving claims for breach of fiduciary duty against the former trustee. Secured a jury finding that the defendant breached his fiduciary duties. Case on appeal to the Second Circuit.

### ***Clark Material Handling v. Toyota Material Handling USA***

Represented Clark in tortious interference case relating to forklift distributorship. Following two-week jury trial in W.D. North Carolina, won jury verdict. Court awarded treble damages and attorneys' fees. Case settled while appeal was pending.

### ***Administradora v. DuPont***

Represented DuPont in three-week jury trial in Miami state court of product liability action involving Benlate® fungicide. Plaintiff, a large Costa Rican citrus producer, claimed \$42 million in damages. Jury found plaintiff 60% contributorily negligent and awarded substantially reduced damages, resulting in an award of a small fraction of plaintiff's claim. Case settled on favorable terms.

### ***FGIC Ad Hoc Group of Investors***

Represented ad hoc group of investors, comprised of hedge funds and insurance companies, in nine Countrywide residential mortgage-backed securities trusts insured by Financial Guaranty Insurance Company (FGIC). Facilitated a \$950 million settlement among Bank of America, FGIC, and BNY Mellon as trustee for the nine trusts.

### ***Las Vegas Hepatitis C Litigation***

Represented UnitedHealthcare in litigation in Clark County, Nevada encompassing over forty individual cases, pending before twenty different judges. Plaintiffs were individuals who claimed to have contracted Hepatitis C during endoscopy procedures performed at forty clinics that were on defendants' networks of approved healthcare providers. Defendants were health plans and other entities affiliated with UnitedHealthcare. Tried one case (*Martin v. PacificCare of Nevada, et al.*), resulting in a favorable jury verdict and subsequent settlement of half of the pending cases. Began trying a second case (*Paul v. Health Plan of Nevada, et al.*), which settled one month into trial, along with the other remaining cases.

***Erricos v. Stryker***

Represented Stryker in breach of contract actions in S.D.N.Y. and Michigan state court stemming from Stryker's acquisition of SpineCore. Plaintiffs alleged approximately \$250 million in damages. Won summary judgment after which case settled favorably.

***American Airlines v. Sabre Inc.***

Represented Sabre in federal and state antitrust actions relating to the display of airline flights and fares in Sabre's Global Distribution System. American claimed \$1 billion dollars in damages. Jury trial in Texas state court. Case settled favorably during trial.

***State Compensation Insurance Fund v. Khan, et al.***

Represented defendants in C.D. California RICO action seeking over \$100 million in damages arising out of alleged medical billing fraud. Won summary judgment.

***RealNetworks Inc. v. Microsoft***

Represented RealNetworks in antitrust suit in N.D. California concerning digital media and operating system markets. Resulted in \$761 million settlement for RealNetworks.

***Confidential AAA Arbitration***

Represented a "Big Four" accounting firm in AAA arbitration against venture capital firms claiming \$100 million in damages. Plaintiffs alleged accountants' negligence regarding due diligence and audit work in connection with large private acquisition. Complete defense verdict in client's favor.

***Treasurer of the State of Conn. v. Forstmann Little, et al.***

Represented Forstmann Little in litigation brought by the State of Connecticut, alleging breach of fiduciary duty, breach of contract, and violations of securities laws. Connecticut sought approximately \$1 billion in damages. After five-week trial in the Superior Court in Connecticut, the jury rendered a complete defense verdict.

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

Represented DuPont in New Jersey state court lawsuit brought by 1,600 plaintiffs alleging community-wide environmental contamination by DuPont blasting cap plant. After ten-week trial on ten plaintiffs' claims, court dismissed punitive damages claims, and jury awarded no damages to seven of ten plaintiffs. Jury verdict for three plaintiffs of damages totaling less than \$500,000.

***Residential Funding (GMAC) v. DeGeorge Financial***

Represented Residential Funding in D. Connecticut jury trial of lender liability case involving purchases of home construction loans. DeGeorge sought \$390 million plus punitive damages. Residential Funding sought \$96 million by counterclaim. Jury verdict for Residential Funding on all issues. Jury awarded Residential Funding \$96 million in damages.

***SK Handtools v. Dresser Industries***

Represented Dresser in Chicago Cook County fraud case in which a different law firm lost \$4 million in compensatory and \$50 million in punitive damages. Won appeal, reversing damages verdict and remanding for new trial. After three-week retrial, jury awarded \$1 in nominal damages.

***Murphy v. United Technologies***

Represented United Technologies in state court in West Palm Beach, Florida in a fraud and breach of contract case involving the sale of a business. Won jury verdict for United Technologies.

***Chromalloy Gas Turbine v. United Technologies & Pratt & Whitney***

Represented Pratt & Whitney in suit brought by world's largest independent engine-repair company for alleged monopolization. Chromalloy sought \$600 million in trebled damages. After a four-month jury trial in District Court of Bexar County in Texas, the jury returned a verdict for Pratt & Whitney of no damages. Affirmed on appeal.

***Wagner v. NL Industries***

Represented NL Industries in class action in Philadelphia Court of Common Pleas 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. Won jury verdict on all issues following ten-week trial. Affirmed on appeal.