

CANADA CHOOSES BARTLIT TO SMOKE R.J. REYNOLDS IN COURT



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CHICAGO – Fred Bartlit doesn't consider himself to be a "litigator."

A "litigator," said Bartlit, takes on a case and keeps it going until it's close to trial and then negotiates a settlement.

But a "trial lawyer"-which is how Bartlit sees himself and the attorneys in his firm-prepares a case for trial and doesn't get sidetracked with discussions and negotiations.

"I believe you get your best resolutions when you are well represented by a trial lawyer," said Bartlit, a name partner in Chicago's Bartlit Beck Herman Palenchar & Scott LLP. "Then there is no lingering question in anybody's mind about whether the case will be tried and how well it will be tried."

Consider the firm's track record: 17 trial wins, compared to two losses and three settled cases since 1994. That and Bartlit Beck's go-to-trial philosophy may explain how the firm caught the eye of the Canadian government when it needed representation for a lawsuit it filed late last year in upstate New York against tobacco giant R.J. Reynolds.

The Canadians are seeking to recoup millions in allegedly lost tax revenue and they obviously wanted to turn the case over to a firm with a reputation for getting results.

Bartlit Beck, with offices in Chicago and Denver, sets itself apart by the prepare for trial approach and by not having geographical ties with the client or the court system the case is tried in, Bartlit said.

"So when Canada comes to Chicago to hire us for a case in Syracuse it seems to me people are picking us because they honestly believe we are the best," Bartlit said.

Canadian Department of Justice Assistant Deputy Attorney General Ian MacGregor said Bartlit was hired because his firm can "get the job done."

"Their team approach, the sharing of information with us, left a very favorable impression," MacGregor added. "Obviously this is complex litigation and we need highly skilled lawyers."

Bartlit, Beck is considered to be one of the top civil litigation law firms in the country. In 1999, the National Law Journal named Bartlit and partner Philip Beck among the Top 10 litigators in Illinois. The NLJ in 1997 named Bartlit among the 100 most influential lawyers in the country, and named two cases handled by the firm—a lead poisoning verdict from 1994, and a tainted blood verdict from 1997— as two of the most notable in those respective years.

Whether the firm's reputation that attracted the Canadian government will play into the Reynolds defense is unknown, although Bartlit said, "I'm sure they know we've tried a lot of cases. They know we will not cave in on the courthouse steps."

The issues in the case intrigued Bartlit: R.J. Reynolds allegedly created the smuggling operation in 1992 to get around a Canadian tax increase on cigarettes meant to reduce the number of teenagers who smoke.

"The idea that a U.S.-run company would intentionally try to get around the policy of another government designed to save the lives of teenagers from cancer...that's thwarting another country's national health policy," Bartlit said.

Named as defendants in the lawsuit are R.J. Reynolds Holdings, Inc., R.J. Reynolds Tobacco Co., R.J. Reynolds Tobacco International, Inc., RJR-MacDonald, Inc., R.J. Reynolds Tobacco Co., PR, Northern Brands International and Canadian Tobacco Manufacturers Council.

The 118-page complaint filed in December in U.S. District Court in Syracuse reads like a narrative of a fictional legal thriller: high-ranking company officials working with locals in upstate New York, including a former state trooper and a GOP chairman from Niagara Falls, to smuggle thousands of cigarettes through the St. Regis/Akwesane Reservation that straddles the border between the U.S. and Canada.

Key to the operation, according to the complaint, was Northern Brands International, a subsidiary of RJR, which sold cigarettes to nine black market distributors who, in turn, sold to wholesalers at the reservation. The Attorney General of Canada vs. R.J. Reynolds Tobacco Holdings, Inc., et al. No. 99-CV-2194.

"(NBI) was set up to hide the smuggling. It was basically two offices with two employees down there (in Winston-Salem, N.C.)," Bartlit said. "The shell company had more profits in one year, we are told, than Ford Motor of Canada."

In a prepared statement, R.J. Reynolds Tobacco Co. said that its employees were not "involved in the day-to-day business operations of any international operations, including Canada."

Reynolds Tobacco has since sold R.J. Reynolds International, RJR-MacDonald, and Northern Brands. As part of the sale of RJR International, Reynolds Tobacco has "agreed to pay for certain potential liabilities against our former international company arising out of investigations of alleged smuggling in Canada," the release said.

The lawsuit grew out of a federal criminal investigation into the smuggling operation that concluded in 1998 with 21 defendants pleading guilty and NBI paying a \$15 millions penalty.

While Bartlit has tried cases outside the U.S. before, this was the first time he was asked to represent a foreign government, and the first time, he believes, that Canada has filed a lawsuit in the U.S.

In approaching the case, the goal will be to prove how the scheme was hatched and operated, Bartlit said.

"We have some internal documents from RJR that were written at the time, showing the planning and evolution of the smuggling scheme," Bartlit added. "We have witnesses, ex-employees who left the company who were in responsible positions who had these documents and shared them with us."

Civil actions against big tobacco companies are nothing new in recent years, although the Canada case differs in that it focuses on the smuggling not the health-related issues of other lawsuits.

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