

Price-fixing conspiracy case ended in top settlement

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■ Top Settlement



David C. Eddy

Family-run companies, long relationships and handshake deals have long formed the fabric of the textile industry. Convincing members of that circle that their market might have been manipulated wasn't easy, said Columbia, S.C., lawyer David C. Eddy.

As criminal investigations by the U.S. Department of Justice mounted, however, the idea of pursuing civil claims became more appealing.

Eventually, 22 companies joined as plaintiffs in a federal lawsuit filed in 2006 in North Carolina against Hoechst Celanese Corporation and its affiliated entities, alleging that the company and other suppliers of polyester staple fiber had conspired to fix prices and allocate customers during a period that started in the mid-1990s.

In June, the plaintiffs reached a \$107 million settlement with the defendant that tops the 2008 survey of the state's large verdicts and settlements reported to North Carolina Lawyers Weekly.

"It became apparent that an industry that was in desperate shape was being kicked around by people that these companies had viewed as their partners," said Eddy, the lead lawyer for a Nexsen Pruet, which had spearheaded the law suit at first.

"But it was quite a hurdle getting them to believe that they had been victimized," Eddy said. "I simply reached out to in-house counsel of clients to find out if they were aware of the litigation, and the textile clients I worked with reached out to get others to join. Ultimately, a number of them filed suit."

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Large
Verdicts &
Settlements

■ PRICE-FIXING continued

Eddy said his firm represented 17 of the plaintiffs — companies based in North Carolina, South Carolina and Georgia who were purchasers of the polyester staple fiber, a raw material used for yarns and other textile products. They received \$56 million from the settlement, the firm said.

Three other firms — Charlotte's Robinson, Bradshaw & Hinson, Washington, D.C.'s Reed Smith and Atlanta's Powell Goldstein — represented the other plaintiffs, who secured a combined \$51 million.

Everett J. Bowman and Mark W. Merritt led the litigation for Robinson, Bradshaw & Hinson. They were assisted by attorneys Jennifer F. Revelle and Blake W. Thomas.

The plaintiffs' Sherman Act claims against the company (and its parents and subsidiaries) known today as Celanese Corporation arose from a series of criminal cases involving other members of the alleged price-fixing and customer-allocation conspiracy.

According to a Nexsen Pruet press release, Dupont had disclosed the conspiracy to the U.S. Department of Justice in April 2000 in a bid to receive amnesty. Later on, Arteva pled guilty to fixing prices and allocating customers for the polyester fiber from September 1999 through January 2001.

The plaintiffs had previously settled claims against four other alleged conspirators — E.I. DuPont de Nemours & Company (and its joint venture partners DuPont-Akra and DAK Americas), Arteva Specialties (now Invista), Wellman Inc., and Nan Ya Plastics Corporation of America.

"Information that we discovered during discovery through depositions and document review led us to believe that the company which had sold its assets to [Invista], Hoechst Celanese, also had liability for price fixing," Bowman said.

In a criminal trial against an ex-Nan Ya employee, a former Celanese employee testified that the conspiracy dated back to at least 1995. Eddy said that spurred him to seek damages for his clients that dated back to that time.

He said he worked closely with fellow Nexsen Pruet lawyers Marguerite S. Willis, Dennis J. Lynch, Travis C. Wheeler and Kristian M.

Cross to build the case.

"Obviously, the most difficult thing for the plaintiff in these cases is to establish the defendants' involvement in a conspiracy," Eddy said. "There's no written agreement saying, 'Let's get together and set a price.'"

"You have to do a lot of leg work on communications, meetings, expense reports, personal journals and diaries and link it all together. And we did that."

A turning point came in November 2006, when U.S. District Judge Richard L. Voorhees found the defendant guilty of discovery abuse and ordered the company to produce what eventually led to more than 750,000 pages of documents.

Bowman said that another key development came during the summer when Judge Voorhees denied various motions filed by the defendant, including a motion for summary judgment.

The case settled three days before it was to go to trial in the first week of June.

"We developed a sufficient record before trial to convince them that they had a real risk of liability," Eddy said.

The defendant has never admitted liability and has since filed a legal malpractice suit against the New York firm that represented it during the polyester staple litigation between March 2002 and July 2006.

According to news reports, the suit alleges that the firm made mistakes that led to the November 2006 sanctions, created the prospect of future sanctions and ultimately forced the company to reach the \$107 million settlement.

The New York firm has filed a lawsuit of its own against the defendant, seeking unpaid legal fees and a declaratory judgment that its work on the case met professional standards.

Eddy declined to comment on those cases.

The polyester staple litigation is a "done deal," he said, and he has moved on.

"I don't think it was the toughest case I've ever handled, but it certainly was one of the most gratifying in my 30-year career," he said.

Odds, ends and trends

The settlement in the multidistrict proceeding, *In re Polyester Staple*

Antitrust Litigation (U.S. District Court for the Western District of North Carolina, MDL Docket No. 3:03-CV-1516), ranks as the ninth largest recovery reported to North Carolina Lawyers Weekly during the past 20 years.

It also continues a trend: A complex business litigation case has produced the top settlement in five of the past six years of the survey, with three of those settlements topping the \$100 million mark.

This year's top verdict also came from the business litigation arena.

In September, a Wake County court entered a \$57 million judgment in favor of a Research Triangle Park-based drug discovery and development firm in a trade secrets theft case against Chinese business interests that the firm had accused of stealing a patented cancer treatment formula.

Raleigh lawyers Jonathan D. Sasser and Thomas H. Segars led the lawsuit in that case, *Serenex, Inc. v. Huang, et al.*, for the law firm of Ellis & Winters.

Motor vehicle negligence, medical malpractice and land condemnation cases comprise the bulk of the rest of the top 25, including the No. 3 recovery on the list: A \$27.5 million Richmond County verdict in a motor vehicle negligence case that involved an intoxicated driver.

Rockingham lawyer Richard G. Buckner of Sharpe & Buckner represented the plaintiffs in that case, *Henry v. James*, which included a \$20 million punitive damages award. The verdict came out in October.

The size of the recoveries in the top 25 increased from 2007, and they were on par with the averages reported from 2003-2007.

The top 10 reported verdicts and settlements in 2008 totaled a combined \$298 million. In 2007, the top 10 produced a total of \$172 million.

The cut-off marks also rose. In 2007, the top 10 cutoff point was \$5.5 million; this year, it was \$6.75 million. The No. 25 recovery in 2007 was \$2.4 million, and this year, it hit \$2.6 million.

During the period from 2003-2007 — the five years prior to this survey — the average cutoff point in the top 10 reported verdicts and settlements survey was \$6.1 million, and the average cutoff point for the top 25 was \$2.8 million.