
Hale and Dorr Voids \$26 Million Verdict against Client

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In a decision of the United States District Court for the Eastern District of Wisconsin, a \$26 million judgment obtained by plaintiff Schreiber Foods, Inc. against Hale and Dorr client, Kustner Industries, S.A.—a Geneva-based manufacturer of cheese processing machines for the dairy industry—was vacated.

In 1998, Kustner was hit with a \$26 million jury verdict for infringing patents directed to the manner of wrapping individually wrapped slices of cheese. Another firm conducted the trial. Hale and Dorr was then retained to represent Kustner in post-trial proceedings. After motions to overturn the verdict were granted by the trial judge but reversed on appeal, judgment entered against Kustner. Shortly thereafter, in October 2002, Hale and Dorr learned that the plaintiff, Schreiber Foods, Inc. in pursuit of a tax strategy, had transferred one of its patents—and the right to recover past damages—to a subsidiary so that they did not own the patent at trial. Following the jury verdict, the patent was transferred back to the parent whose lost profits had served as the measure of damages at trial.

Hale and Dorr moved for relief under Rules 60(b)(3) (misrepresentation) and 60(b)(4) (void judgment) and argued that the court had lacked jurisdiction from the outset. The district court allowed 45 days of discovery, in which the firm took five depositions. Discovery showed that the plaintiff had established the subsidiary to allow the parent to pay a royalty to the subsidiary (thereby moving income to a no income tax state), that the transfer had been approved by the plaintiff's board of directors prior to trial and that plaintiff's trial counsel had learned of the transfer no later than five weeks after trial, but permitted the case to go through post trial motions and appellate hearings without informing the court.

In a 37-page opinion, the district court vacated the judgment and dismissed the case holding that it lacked jurisdiction, and, in the event that it had jurisdiction, granting the motions under Rules 60(b)(2) and 60(b)(4) because the plaintiffs had engaged in misrepresentation and the judgment was void.

James L. Quarles III and William G. McElwain, with the assistance of Timothy Jezek and Joshua A. Davenport, represented Kustner before Judge Lyn Adelman of The United States District Court in the Eastern District of Wisconsin.

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