

20-hour jury trial nets \$12M award



Fertilizer maker lost reputation, market share

By Douglas Levy

Grand Rapids U.S. District Judge Robert J. Jonker put the parties in a complex business tort case on the clock: Both sides would have 10 hours of court time to present their cases.

After the arguments, the jury awarded \$12 million to a fertilizer company, finding a competitor made false statements against its product, causing the company to lose its market share and its reputation.

The jury awarded New Jersey-based LidoChem Inc. \$10.8 million for lost profits and \$1.2 million for disgorgement. In addition, because the jurors determined that defendant Stoller Enterprises Inc.'s actions were willful, the plaintiff can pursue treble damages.

"The concept of timed litigation is going to become ever and ever more present, especially in the federal courts," said Grand Rapids lawyer William D. Howard. "I see it happening more and more in federal courts."

Howard and Jean M. Treece, both of Howard Law Group, represented LidoChem.

A Verdicts & Settlements report on *Lido-Chem Inc. v. Stoller Enterprises Inc.* can be found on page 7.

In the case, a Zeeland farmer in 2001 ap-

plied Nutreflo, one of Lido-Chem's chemical fertilizer products, to his soybean crop. When the first-time soybean field's crops developed problems, Jerry Stoller, president of Texas-based Stoller Enterprises, came to have look and concluded that the crops had been poisoned.

Before 2001, Stoller Enterprises had lost both its sales representative for the Midwest region and its lead chemist to LidoChem.

"We argued that [Stoller] saw that as an opportunity to come to Michigan and spread this lie and regain his foothold," Treece said.

In 2002, Stoller had Nutreflo tested by defendant McKenzie Wright Laboratories LLC. Stoller then said that a toxic ingredient, 2pta, was found in the Nutreflo and had damaged the farmer's crops. Stoller then told other farmers and distributors that Lido-Chem put toxins in their products, lambasting LidoChem's name in the process and, Treece said, violating the federal Lanham Act.

"Once you make a statement in interstate commerce, where you're trying to influence purchasing decisions of consumers, either to not buy our goods or to prefer yours, that's the Lanham Act; it doesn't have to be false, but it has to have a tendency to deceive," Treece said.

"False statements obviously are deceptive and there are also statements that are just misleading. We argued that this was a false statement because there was no 2pta in our product and it wasn't toxic."

To adhere to Jonker's 10-hour limit, Howard and Treece had to tailor their case to figure out what should stay and what could go when the trial began.

Howard said he used a jury consultant not just for selecting the jury, "but to basically figure out how to get 10 gallons of information in a 1-gallon bucket," adding that he initially estimated needing approximately 50 hours to try LidoChem's case.

"Had we not done that, we never would have been able to prevail in this case," he added.

Howard and Treece said they tried their case to jury focus panels, who gave feedback on witnesses and presentations. Over the course of four focus panels, the attorneys narrowed down their presentation to what was essential.

For example, instead of having eight farm-

ers testify about Lido-Chem products, plaintiff's counsel narrowed it to the best one.

"We shifted to the evidence and the facts to give us our best scenario and our quickest scenario," Howard said.

The strategy included a PowerPoint presentation at opening statements, to explain what the Lanham Act is all about to jury.

"As Bill likes to say, 'We hunt elephants,'" Treece said. "You have to have a very big picture, and it has to be a theory and theme that a jury will lock into. What juries lock into is lying and cheating, and that's what the defendants did. They lied and they cheated to gain market share and it worked."

Plaintiff's witnesses corroborated Lido-Chem's claims. This included an Ohio-based company that does secondary manufacturing for Lido-Chem's products; its representative said it stopped working for LidoChem because of the toxin rumors.

In addition, a distributor said it stopped recommending Nutreflo at the time based on the rumors; a farmer testified to his refusal to continue using the product; and the Zeeland farmer's attorney said he wouldn't have tried to file a lawsuit against LidoChem if not for Stoller's offering to be an expert and giving him the false lab report.

Treece added that a former Stoller employee testified that Stoller told McKenzie Wright to find 2pta specifically in the Nutreflo sample and that the laboratory reported that it did. But plaintiff's toxicologist testified that 2pta was not found in the product.

The plaintiff also used "the right kind of economic expert" to break down the damages issue,

"We didn't use [an accountant] who did divorce work in the past," Howard said. "We had the president of the International Agricultural Economic Forecasters Society for 12 of the last 20 years ... who gave his opinion, and he was very conservative. We had a very good expert who did not wander far from the tree — he had one hand, maybe two hands on that tree, creating incredible credibility with the court and with the jury."

Howard and Treece said they are filing post-trial motions for attorney's fees, costs, interest and trebled damages. A ruling is expected in June or July.

Grand Rapids attorney John T. Sperla, who represented the defendants, could not be reached for comment.

Verdicts & Settlements

Maker disputed claims its product was toxic

Jury awards
lost profits,
disgorgement
\$12 million

Plaintiffs LidoChem Inc. and Frank Dean established through testimony of farmers, distributors and manufacturers of LidoChem's product that defendants David Alexander, Jerry Stoller and Stoller Enterprises Inc. violated the Lanham Act, 15 U.S.C. § 1051 et seq., by falsely asserting that the LidoChem product contained a toxin/poison that damaged a farmer's crop.

Plaintiff argued that defendants conspired to have the farmer utilize their false assertions in bringing a lawsuit against LidoChem in 2004, and continued to disparage LidoChem throughout the marketplace.

In addition, plaintiffs contended that defendants plotted to interfere tortiously with LidoChem's business relationships



HOWARD

and expectancies with manufacturers, distributors and farmers.

LidoChem's liability expert, a toxicologist, testified that no such toxin existed in the LidoChem product. LidoChem's damages expert, who specializes in agricultural economics and forecasting, testified that LidoChem sustained damages between \$9.9 and \$11.7 million.



TREECE

A federal jury in Grand Rapids awarded plaintiffs \$10.8 million for lost profits and \$1.2 million for disgorgement. In addition, the jury determined that defendants willfully violated the Lanham Act, thereby allowing plaintiffs to recover fees, costs, interest and treble damages through post-trial motions.

Type of action: Federal Lanham Act and state business claims

Type of injuries: Lost sales, loss of manufacturing and distribution network

Name of case: *Lidochem Inc. v. Stoller Enterprises Inc.*

Court/Case no./Date: U.S. District Court, Western District of Michigan; 1:09-CV-204; March 26, 2014

Tried before: Jury

Name of judge: Robert J. Jonker

Verdict amount: \$10.8 million in lost profits, \$1.2 million disgorgement

Special damages: Jury determined defendant violated the Lanham Act willful, allowing plaintiffs to recover treble damages through post-trial motions

Most helpful experts: Dr. Ernest D. Lykissa, toxicologist, Deer Park, Texas; Philip Geoffrey Allen, agricultural economic forecasting, Amherst, Mass.

Attorneys for plaintiff: William D. Howard, Jean M. Treece

Attorneys for defendant: John T. Sperla (Grand Rapids); Barry G. Flynn (Houston)