



## How They Won It: McGuireWoods, Crowell Score For DuPont

By **Django Gold**

Law360, New York (October 18, 2011, 6:05 PM ET) -- Juggling more than a million pages of discovery documents, the lawyers at McGuireWoods LLP and Crowell & Moring LLP knew they were going to have to keep things simple to convince a jury that Kolon Industries Inc. had squeezed trade secrets out of former DuPont Co. employees to produce a rival body armor product.

Thanks to the fruits of a yearlong discovery phase, what had started as a relatively simple civil proceeding stemming from the FBI's criminal investigation into a former DuPont body armor engineer's defection to Kolon had ballooned into a monster of a case that required a seven-week jury trial to sort out.

"By the time we finished peeling the onion, there was just too much information to display," said McGuireWoods attorney Rod Satterwhite, who along with partner Brian Riopelle and Crowell intellectual property partner Michael Songer brought home a \$920 million jury verdict for DuPont in September, one of the largest ever reached in the Eastern District of Virginia.

"The idea was to simplify that information for the jury so we weren't boring them to death. To bring the pieces together to tell a story," Satterwhite said.

DuPont's suit against its South Korean rival had started as a parallel proceeding to a criminal trial against former DuPont employee Michael Mitchell who, after 24 years of developing and marketing the company's proprietary Kevlar body armor technology at its Richmond, Va., facility, jumped ship to work as a consultant for the DuPont competitor. Kolon's products subsequently improved in quality.

But after the civil suit was filed in February 2009, Mitchell's alleged malfeasance was quickly determined to be just one piece of a larger campaign by Kolon's to obtain from DuPont employees information about the company's high-strength Kevlar fiber technology to apply to their own research and development.

“Our case started with Mitchell, but discovery showed that there were more individuals involved, and that the magnitude of what Kolon was doing was much larger than just Mitchell and a document or two,” Songer said.

In the months leading up to the July 2011 beginning of the jury trial, DuPont's attorneys were faced with the daunting task of extracting a cohesive plan of attack from the mountains of paper and tape that had been collected in discovery.

The trial attorneys decided to take a “less is more” strategy in explaining Kolon's alleged plot to win over former DuPont workers, hoping to corral the prolific evidence and the highly technical nature of the patented Kevlar technology at issue into an approachable narrative.

To that end, the plaintiff's attorneys allowed Kolon's lawyers to talk themselves hoarse throughout the jury trial, knowing that such a tactic would alienate the jury.

“We kept our examinations short, and we waived a number of our cross-exams and redirects,” Satterwhite said. “But they cross-examined every single one of our witnesses, and many of their cross-exams went on for longer than our direct exams. At times, the jury was visibly unhappy about that.”

Though holding the jury's attention for seven weeks was no easy feat, Satterwhite said that he and the other trial attorneys were helped along by valuable and salacious audio evidence that had been supplied by the FBI after their criminal investigation.

“We had audio tapes of an undercover meeting between a DuPont worker who met with Kolon employees in a motel room to discuss the transfer of information,” said Satterwhite.

The DuPont employee, who was working with the FBI, was posing as a disgruntled employee as part of a sting operation, Satterwhite said.

“This was a real juicy tidbit for the jury, because it allowed them to listen in on an FBI wiretap in a civil case. It definitely helped to keep their attention.”

Another asset the plaintiff's attorneys had at their disposal was the assistance of several expert witnesses from DuPont who had worked for the company for decades and were instrumental in breaking down the complex parameters of Kevlar technology for the jury.

“I give all credit to the DuPont witnesses,” Songer said. “They were credible, knowledgeable and they really brought the technology to life.”

“Because these guys had been working at DuPont for 20, 30 years, they were able to bring up personal stories and anecdotes that really helped explain just how the technology had developed through the years, and I think this really allowed the jury to relate.”

Helped along by Mitchell's guilty plea in the related criminal trial, and thanks in no small part to the Virginia district judge's ruling that Kolon had deliberately deleted key emails that, if preserved, would have played in DuPont's favor, the jury determined the Kolon had conspired with DuPont's former employees to lift a total of 149 confidential trade secrets from its rival.

Compared to the herculean task of developing its trial strategy, DuPont's argument for damages was relatively straightforward, Songer said.

"We chose the unjust enrichment theory, that Kolon had avoided the expense of doing their own research and development," Songer said. "Then we had to demonstrate the amount of research that had gone into DuPont's technology over the years."

Satterwhite agreed that though the damages calculation was an important aspect of the case, the jury was educated enough that the attorneys could continue to keep it simple.

"We had our damages expert on the stand for less than an hour and we cross-examined [the Kolon expert] for less than half an hour. The jury had the information, and by that point they understood our argument."

The jury issued its \$920 million damages verdict on Sept. 14. Kolon has said it will appeal, and is currently pursuing a related antitrust suit against DuPont.

DuPont is represented by Rodney A. Satterwhite, Brian Charles Riopelle, Kristen Marie Calleja, Matthew Devane Fender, Robyn Suzanne Gray and Thomas Moultrie Beshere III of McGuireWoods LLP, and Michael Joseph Songer, Andrew David Kaplan, David Daniel Cross, Jeffrey L. Poston, Kent Alan Gardiner, Shari Ross Lahlou, Stephen Matthew Byers and Terence P. Ross of Crowell & Moring LLP.

Kolon is represented by Jeff G. Randall, Scott M. Flicker and Thomas P. O'Brien of Paul Hastings LLP, Rhodes B. Ritenour and Christina D. Trimmer of LeClairRyan, and Dana J. Finberg of SNR Denton.

The case is DuPont Co. v. Kolon Industries Inc. et al., case number 3:09-cv-00058, in the U.S. District Court for the Eastern District of Virginia.

--Editing by John Quinn.

All Content © 2003-2011, Portfolio Media, Inc.