



## DuPont Escapes Kolon's Body Armor Antitrust Case

By **Stewart Bishop**

*Law360, New York (April 06, 2012, 5:48 PM ET)* -- A Virginia federal judge on Thursday threw out an antitrust suit brought by Kolon Industries Inc. against E.I. Du Pont De Nemours and Co. over a synthetic fiber used in body armor, finding there was no evidence of a monopoly by DuPont.

U.S. District Judge Robert E. Payne granted DuPont's motion for summary judgment, ruling that DuPont did not monopolize or attempt to monopolize the para-aramid fiber market and held that competition in the industry is thriving.

Judge Payne ruled that no reasonable jury could conclude that DuPont had monopoly power.

"Du Pont clearly lacks the power to control prices and exclude competition," Judge Payne wrote in the memorandum. "Otherwise, it would have been able to prevent the decrease in its market share and the rise of one of its major competitors."

The judge also ruled that Du Pont's supply agreements with some of its customers did not foreclose the market to Kolon, finding that the non-exclusive and short-term nature of the agreements allowed for DuPont's competitors to conduct business with all such customers, nixing any claims of foreclosure.

"Kolon has put forth no evidence demonstrating that other competitors have been shut out of the market," Judge Payne wrote. "All the evidence on record is to the contrary."

The judge dismissed Kolon's claims of monopolization and attempted monopolization with prejudice, the suit says.

An attorney for DuPont, Kent A. Gardiner of Crowell & Moring LLP, said he and his client are gratified by the judge's decision in the case.

"The ruling fully vindicates DuPont's business practices in this critical sector of the economy," Gardiner said. "The court rightly found that DuPont neither was a monopolist in the market nor engaged in any anti-competitive conduct."

Attorneys for Kolon were not immediately available for comment on Friday.

Kolon's antitrust case, in which Kolon has already been sanctioned, began as a counterclaim in a trade secrets suit, but the court split off Kolon's second amended counterclaim as its own case in September.

Kolon accused DuPont of monopolizing the U.S. market for para-aramid fiber, which is used in DuPont's Kevlar and Kolon's Heracron products.

On March 22, DuPont Co. asked the court to sanction Kolon by tossing the antitrust case, claiming Kolon destroyed relevant documents and failed to fork over electronically stored information despite being ordered to do so.

The granting of summary judgment marks the latest development in the legal battle between Kolon and DuPont that's been playing out in a Virginia federal court since 2009. DuPont's trade secrets suit led to a jury awarding DuPont nearly \$920 million in damages in September.

Still pending are DuPont's motion for injunctive relief requiring Kolon to stop making products using allegedly stolen technology, as well as DuPont's motions for additional sanctions and attorneys' fees.

DuPont is represented by Kent A. Gardiner, David D. Cross, Jeffrey L. Poston, Kathleen Clair and Luke van Houwelingen of Crowell & Moring LLP.

Kolon is represented by Jeff Randall and Daniel Goldman of Paul Hastings LLP, Christina Trimmer and Rhodes Ritenour of LeClairRyan and Dana Finberg of SNR Denton.

The case is Kolon Industries v. E.I. du Pont de Nemours, case number 3:11-cv-00622, in the U.S. District Court for the Eastern District of Virginia.

--Additional reporting by Ben James. Editing by Sarah Golin.

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