

Jury Awards DuPont \$920M In Kevlar Trade Secrets Suit

By **Kaitlin Ugolik**

Law360, New York (September 14, 2011, 6:31 PM ET) -- A federal jury in Virginia on Wednesday awarded DuPont Co. \$920 million in damages in its suit accusing competitor Kolon Industries of using trade secrets brought over by an ex-DuPont employee to gain an unfair advantage in the market for body armor.

The jury found that Kolon illegally obtained information about the technology used to make the Kevlar aramid fiber used in military and law enforcement flak jackets from a former DuPont employee it had hired as a consultant in order to improve its process for producing a rival product.

In a statement released Wednesday, Kolon maintained it had not stolen any confidential information from DuPont, and said it would continue to pursue an antitrust action accusing the science products giant of attempting to create a monopoly for the material from which Kevlar is made.

"The size of this award is one of the largest in defense of business processes and technologies," DuPont Senior Vice President and general counsel Thomas L. Sager said in a statement Wednesday. "It also sends a message to potential thieves of intellectual property that DuPont will pursue all legal remedies to protect our significant investment in research and development and our proprietary information for the benefit of our shareholders and customers."

The suit, filed in February 2009, accused Kolon of using proprietary information passed on by Michael Mitchell, who began working for the company in 2006, after leaving DuPont. Mitchell pled guilty to trade secrets theft and obstruction of justice, and was sentenced in March 2010 to 18 months in prison.

The suit alleged conspiracy to injure DuPont in trade, intentional interference with an employment agreement, intentional interference with business expectancy, wrongful conversion of trade secrets and engagement in civil conspiracy.

"Companies around the world are facing a significant challenge to protect trade secrets and intellectual property," Thomas G. Powell, president of DuPont Protection Technologies, said in the Wednesday statement. "DuPont, as a market-driven science company, has devoted more than 40 years and considerable investment to researching and refining Kevlar to make it the world's most trusted aramid fiber."

Kolon said in its statement that it had been working with aramid fibers since 1979, and had spent a great deal of time researching various types of fibers.

“Kolon had no need for and did not solicit any trade secrets or proprietary information of DuPont, and had no reason to believe that the consultants it engaged were providing such information. Indeed, many of the 'secrets' alleged in this case are public knowledge,” Kolon said.

DuPont accused Kolon of withholding evidence in August 2010, based on screenshots of Kolon employees' computers in which emails were identified as to be deleted, as well as a suspiciously low document production from Kolon executives connected to Mitchell and Kolon's product to compete with Kevlar.

Kolon claimed most of the emails and files were recoverable, and thus not really destroyed when they were deleted from individual employees' computers.

U.S. District Judge Robert E. Payne found in July that Kolon employees had intentionally deleted emails in bad faith, but stopped short of granting default judgment to DuPont as the company had requested.

DuPont executives said Wednesday they would ask the judge to require Kolon to return the confidential information, refrain from using it in the future and pay DuPont's attorneys' fees. Kolon said it would fight the jury's decision and move forward with its antitrust action against DuPont.

Counsel for the parties could not be immediately reached for comment Wednesday.

DuPont is represented by DuPont is represented by Rodney A. Satterwhite, Brian C. Riopelle, Howard Feller, Thomas M. Beshere and Robyn S. Gray of McGuireWoods LLP and Michael J. Songer, Kent A. Gardiner, Stephen M. 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 E.I. DuPont de Nemours and 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.

--Additional reporting by Abigail Rubenstein. Editing by John Williams.

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