



November 3, 2010

VOLUME 9 ISSUE 44

dritoday™

DRI Blog | FTD Archives | Legal News

Join the DRI Community



In The Voice

[DRI News](#)

[This Week's Feature](#)

[Legal News](#)

[And The Defense Wins](#)

[Quote of the Week](#)

[Member Spotlight](#)

[DRI CLE Calendar](#)

DRI Publications

[ERISA Litigation Primer](#)



Links

[About DRI](#)

[Amicus Briefs](#)

[Blawgs](#)

[For The Defense Archives](#)

[Membership](#)

[Membership Directory](#)

[News](#)

[CLE Seminars and Events](#)

[Publications](#)

[The Alliance](#)

[DRI Europe](#)

And The Defense Wins

John M. Stalmack and Michael Barrett



The trial team of DRI members **John M. Stalmack** and **Michael Barrett** of **Bollinger, Ruberry & Garvey** in Chicago, scored a great victory for their client in defense of claims brought by Shrader & Associates, one of

the leading benzene plaintiffs' firms in the country. In the case of *Hornback v. River Valley Coatings, Inc.*, the widowed plaintiff alleged that, as a result of the plaintiff's work in the painting department at Equipto, Inc. for 40 years, he contracted leukemia, which ultimately led to his death. The claims against River Valley were based on allegations that the organic paints and solvents manufactured and distributed by River Valley contained benzene, a known carcinogen.

Plaintiffs' firms are beginning to take a "full court press approach" to these trace-benzene cases in hopes of supplementing fading asbestos practices. In the *Hornback* case, plaintiff's counsel subscribed to this approach and relentlessly demanded an excessively high and unreasonable settlement figure. Not being swayed by plaintiff's counsel's unreasonable demands, the defense team countered with a zealous defense on behalf of River Valley. In preparing their client's defense, attorneys Stalmack and Barrett recognized that this case was a novel trace-benzene case because most of these lawsuits are brought against a large number of defendants. In the *Hornback* case, River Valley was the sole target defendant, which made this a "bet the ranch" piece of litigation. However, the bet on this case was very much worth placing for two reasons. First, the plaintiff could not prove that River Valley violated any duty to the plaintiff. Second, the scientific literature did not support causation between benzene exposure and the plaintiff's particular form of leukemia, chronic myelomonocytic leukemia (CMML).

As to the first point, plaintiff's counsel made vigorous attempts to show negligence on the part of River Valley because the company had thrown away all material safety data sheets (MSDS) that it would have been sent to Equipto. In fact, plaintiff's counsel attempted to introduce as evidence MSDS from third-parties showing benzene listed on certain solvents, such as toluene and xylene. Attorneys Stalmack and Barrett were able to keep out most evidence relating to this "hot button issue" and to educate the jury as to the appropriate regulations followed by River Valley. As to the second point, defense counsel were

[Print to PDF](#)

Share this newsletter



successful in marginalizing the plaintiff's expert witnesses (Dr. Arthur Frank and Dr. Melvyn Kopstein), in addition to educating the jury with their own team of highly regarded experts (Dr. Raymond Harbison and Dr. Gregory Sarna).

Despite the emotional testimony of a widowed plaintiff and her children, and a request for \$2.5 million during the plaintiff's closing argument, attorneys Stalmack and Barrett convinced the jury to return a verdict on behalf of River Valley. This is believed to be the first trial verdict in favor of a manufacturer/distributor involving claims of benzene-related illness in Illinois. This is especially impressive considering that Illinois subscribes to the *Frye* standard for expert witness testimony and Dr. Kopstein, the plaintiff's expert, was able to introduce evidence previously barred in similar federal cases on a *Daubert* standard.

[Back...](#)