

### Sheppard Mullin Client, American Bioscience, Receives Another Favorable Decision

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Sheppard, Mullin, Richter & Hampton announces another favorable decision on behalf of its client, American Bioscience, Inc. (ABI). Sheppard Mullin is proud to announce that Carlton Varner and Joe Coyne, partners in the Firm's Antitrust and Trade Regulations, and Business Trial Practice Groups, respectively, obtained a favorable opinion from the Superior Court of California on behalf of ABI, in *Cobalt Corporation et al. v. Bristol-Myers Squibb; American Bioscience, Inc. et al.* The *Cobalt* case was one of a number of cases related to Taxol that have received nationwide press coverage.

Summary judgment was issued in favor of ABI on California's Cartwright Act and California Business & Professions Code § 17200 claims involving an alleged conspiracy between Bristol-Myers and ABI to delay the entry of generic alternatives to the anti-cancer drug Taxol by collusive lawsuits, manipulation of the Hatch Waxman Act to delay FDA approval of generics, and fraudulent patent infringement suits. Judge Carl West of the Los Angeles Superior Court stated in the Court's summary judgment, "...the Court finds Plaintiffs have not met their burden of demonstrating that under *Aguilar* and *Matsushita*, it is more likely than not that ABI's conduct resulted in an unlawful conspiracy. Nor have Plaintiffs met their burden of submitting evidence which tends to exclude the possibility that Bristol-Myers and ABI acted independently.."

Mr. Varner, the team's antitrust attorney, commented, "We are very pleased with the judgment and delighted for ABI. We believe this case is significant in a number of respects. Judge West's application of *Aguilar* and *Matsushita* conspiracy principles to find there was no conspiracy recognized that ABI was properly enforcing its intellectual property rights. Also, the subject of this lawsuit—alleged conspiracies by pharmaceutical companies to suppress generic competition—has been the focus of a major FTC initiative over the last couple of years. Likewise, Judge West's finding of *Noerr Pennington* immunity for the alleged conduct is consistent with other courts but one to which the FTC has taken some exception in this context."

Mr. Coyne, ABI's trial attorney, said, "This is a victory for innovators of new anti-cancer drugs everywhere. The protections Congress granted patent owners in the Hatch Waxman Act are necessary to encourage research and development of safer and more effective treatments for cancer and other diseases. That is what our client ABI was doing here. The court's finding that our conduct here was a legitimate attempt to safeguard those protections is a big step forward in spurring ABI and others to continue their efforts to develop new and better anti-cancer drugs. This hopefully is the end of a nearly three year saga of unfounded allegations against ABI by plaintiffs, the FTC, and others, and will allow ABI to focus on the development of several new and promising cancer treatments."

**Sheppard Mullin** has more than **380 attorneys** among its **eight offices** in Los Angeles, San Francisco, Orange County, San Diego, Santa Barbara, West Los Angeles, Del Mar Heights, and Washington, D.C. The **full-service** firm provides counsel in Antitrust and Trade Regulation; Business Litigation; Construction, Environmental, Real Estate and Land Use Litigation; Corporate; Entertainment and Media; Finance and Bankruptcy; Financial Institutions; Government Contracts and Regulated Industries; Healthcare; Intellectual Property; International; Labor and Employment; Real Estate, Land Use, Natural Resources and Environment; Tax, Employee Benefits, Trusts and Estates; and White Collar and Civil Fraud Defense. **The Firm celebrated its 75<sup>th</sup> anniversary in 2002.**

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