

# BIG SUITS

## Northeast

### Ocean Spray v. PepsiCo:

Ocean Spray Cranberries, Inc., has declared war on an old ally. On August 10 Ocean Spray sued PepsiCo, Inc., in federal district court in Boston to prevent it from selling or distributing any single-serving juice drinks. The suit claims that PepsiCo's recent acquisition of Tropicana Products, Inc., will cause the drink giant to violate a distribution agreement that Ocean Spray and PepsiCo signed last March.

For in-house advice, Ocean Spray is relying on general counsel **James O'Shaughnessy** and attorney **Richard Stamm**. The growers' cooperative, which is based in Lakeville-Middleboro, Massachusetts, has also tapped **James Burling**, **Michelle Miller**, **Mark Selwyn**, and associate **Lisa Cameron** of Boston's **HALE AND DORR**. Ocean Spray's relationship with the firm dates back more than 50 years, according to Burling.

On July 20 PepsiCo agreed to buy

*Editor's note: Big Suits are placed regionally according to venue.*

Tropicana, a subsidiary of The Seagram Company Ltd. Ocean Spray sued, claiming that by selling Tropicana's single-serving juice drinks, Pepsi will violate the exclusivity contract that it signed with Ocean Spray in March, when it agreed to distribute Ocean Spray single-serving drinks. According to the contract, Pepsi agreed not to sell or distribute products that compete with Ocean



**HALE AND DORR'S  
JAMES BURLING**

Spray's juice drinks, Ocean Spray claims. The two companies have had similar juice drink distribution agreements since 1992. Ocean Spray also asserts that the Tropicana acquisition will result in the misuse of confidential information supplied to Pepsi.

PepsiCo contends that it will continue to follow the terms of its contract with Ocean Spray, according to PepsiCo associate general counsel **Pamela McGuire**.

On August 21 a federal judge in Boston denied Ocean Spray's motion for a temporary restraining order to halt PepsiCo's acquisition of Tropicana; the deal subsequently closed on August 25. Ocean Spray will proceed with the suit, seeking unspecified damages from PepsiCo, according to a company spokesperson.

In addition to McGuire, Purchase, New York-based PepsiCo is relying on division counsel **Kathryn Carson**. It has also tapped **Ronald Rolfe** and associates **Ilana Chill**, **Victor Hou**, and **David Stone** of New York's **CRAVATH, SWAINE & MOORE** as lead outside counsel. Cravath has handled litigation matters for PepsiCo since 1982, according to Rolfe.

PepsiCo has also turned to **Toni**

**Wolfman** and associate **Michael Albert** of Boston's **FOLEY, HOAG & ELIOT** as local counsel. The firm has handled litigation matters for Pepsi for more than 20 years, according to Wolfman.

At press time Ocean Spray had appealed the judge's denial of a temporary restraining order. —CARLYN KOLKER

## Southwest

### Exxon v. Mobil:

Plastics.

In the 30 years since Dustin Hoffman got that now-famous word of advice in *The Graduate*, they haven't become any less important. Now the rights to a revolutionary new method to produce the synthetic substance are at the heart of a legal battle between Exxon Corporation and Mobil Oil Corporation. On August 11 a federal jury in Houston awarded Exxon and its subsidiary Exxon Chemical Patents, Inc., \$171 million in a patent infringement case dealing with a manufacturing process for plastics. Four days earlier, federal district judge Kenneth Hoyt had granted judgment to Exxon as a matter of law.

## BIG SUITS

Meanwhile, the war continues on another front. One day after Exxon sued Mobil in Texas in November 1996, Mobil hit Exxon with a suit in federal court in Alexandria, Virginia, alleging that Exxon had infringed a Mobil patent for particular types of polyethylene plastic and film. The Virginia litigation is currently stayed, pending completion of an interference proceeding before the U.S. Patent and Trademark Office. The patent office proceeding, requested by Exxon, will determine which company was the first to invent the products at issue in the Virginia suit. The company that invented a product first will be entitled to the patent for that product. At press time both companies were preparing supplementary papers to be submitted to the Board of Patent Appeals and Interferences.

In the Texas litigation, Exxon relied on

chief technology attorney **Charles Smith** and attorney **Darrell Warner**. It also turned to regular outside counsel **BAKER & BOTTS**, whose team included **Thomas Adolph, Claudia Frost, Bruce McDonald, William Slusser, Michael Wilson**, and associates **Michael Choyke, Nellie Fisher, Carey Hetherington, Keith Jaasma, Claire Kugler, Amy Maddux, and Alan Witte** of the firm's Houston office. Special counsel **David Hricik** in the Austin office, along with **Kenneth Bialo, Louis Sorell**, and associates **Rachel Atkin, Marta Delsignore, Michael Lippert, and Matthew McCoy** of Baker & Botts's New York office also worked on the case. In addition, **W. Edward Bailey, Marta Gross, Eric Woglom**, and associates **Charles Phipps** and **Maria Walsh** of New York's **FISH & NEAVE** assisted in the successful defense of Exxon's patent. In the Virginia suit and the interference proceeding, Exxon is looking to

Fish & Neave's Woglom, **William McCabe**, and associates **James Doyle, Jr., Gene Lee, and Diana Ruhl**. The firm's **Margaret Pierri**, senior attorney **Thomas Vetter**, and associates **Jeanne Curtis, Gerald Flattmann, Jr., Michael Imbacuan, Donald Reedy, John Rizvi, and Louis Weinstein** are also working on the interference proceeding alone.

The process in dispute in the Texas case involves the use of metallocene catalysts, also known as "smart catalysts," chemicals that allow manufacturers to customize the resin used to make plastics. Such made-to-order resins can be used in a variety of products, from diapers to car bumpers to the plastic bags that hold prepackaged salads in the produce aisle of the local grocery store.

Mobil maintained that Exxon's patent was invalid because of "obviousness," the

existence of prior work in the field of metallocene catalysts. The judge rejected this argument and held that Mobil had infringed Exxon's patent, but left to the jury the issues of damages and willful infringement. The jury found that Mobil's infringement was not willful, and therefore damages were not subject to statutorily permitted enhancement. In a press release, Mobil said that it intends to appeal both the judge's decision and the jury's damages award.

In the Texas litigation, Mobil and its subsidiary Mobil Chemical Company, Inc., which was also named in the suit, relied on Mobil managing counsel **Ronald Bleeker** and **Ann Gillooly** and senior counsel **Edward Beck** and **Patrick McGlone**. Mobil also tapped **David Burgert, Daniel Hedges**, and associate **Brian Davis** of Houston's **PORTER & HEDGES** as lead litigation counsel. **Gregory Maag**