

## Headline News

### United States Court Enters \$458 Million Damages Judgment Against Weyerhaeuser for the Destruction of Paragon

April 5, 2005

**HOUSTON** – U.S. Bankruptcy Judge Margaret Murphy has entered an **Order** and Judgment holding Weyerhaeuser Company liable to the bankruptcy estate of Paragon Trade Brands for \$458 million in damages, plus attorneys' fees and interest.

This dispute stemmed from a 1993 asset sale by Weyerhaeuser to Paragon which closed concurrent with the sale of 100 percent of Paragon's newly issued stock to public investors. Weyerhaeuser received more than \$200 million in proceeds from the IPO. At the time of the offering, Weyerhaeuser had incorporated what it knew were patented features into diapers it sold in the business it transferred to Paragon, but did not have the licenses from its competitors for use of the technology. As a result, Paragon's use of this patented technology resulted in a patent infringement lawsuit against Paragon by Procter & Gamble a year after the IPO, and another case filed after the IPO against Paragon by Kimberly-Clark Corporation. Paragon's loss of the P&G patent case in late 1997 and the huge damages verdict and injunction that were issued set in motion Paragon's bankruptcy filing. In this action by Paragon against Weyerhaeuser, the Court previously held that four warranties included as part of the agreement between Weyerhaeuser and Paragon were breached as a matter of law, because, among other matters, the intellectual property assets transferred to Paragon by Weyerhaeuser were not adequate to conduct the business that Weyerhaeuser was conducting at the time of the IPO. The \$457,858,150 million damages judgment follows a 15-day damages trial held to determine the damages the Paragon estate is entitled to recover based on Weyerhaeuser's breach of the warranties.

Judge Murphy had the following to say in her Order: "...The gravamen of Weyerhaeuser's liability is that, in addition to the funds Weyerhaeuser received in connection with the IPO the primary benefit of the bargain to Weyerhaeuser was divorcing itself from what it knew to be an enormous potential patent infringement liability that was substantially certain to occur. Additionally, Weyerhaeuser was able to reap the benefit of an unpredictably successful IPO. To reward Weyerhaeuser's strategic divestment by limiting damages...would encourage other large corporations to evade liabilities by transferring assets to a subsidiary and divesting themselves of their liability-laden subsidiaries....Weyerhaeuser's apparent strategy was to defer the inevitable as long as possible. From this perspective, it has succeeded: Instead of paying the royalties in 1992 when they were demanded, it has postponed the reckoning until now."

Lawyers representing Randall Lambert, the litigation claims representative for Paragon, were John Lee and Scott Locher of Andrews Kurth (Houston), and co-counsel Parker C. Folse, III of Susman Godfrey L.L.P. (Seattle) and Charles E. Campbell of McKenna Long and Aldridge L.L.P. (Atlanta). Lambert says, "I commend Andrews Kurth for their efforts in bringing this to trial and seeking justice on behalf of the shareholders."

Lee, who represented Paragon shareholders in the original investigation and now represents Lambert in bringing the claims on Paragon's behalf, had the following to say: "Judge Murphy's findings establish that Weyerhaeuser's 1993 IPO of Paragon was tainted by fraud and failure to disclose the gravity of the patent infringement risk confronting Weyerhaeuser, and, after the IPO, Paragon. While Weyerhaeuser managed to skirt liability for securities fraud in the offering, Judge Murphy properly held it accountable for breaching the warranties it was required to make to sell Paragon in the IPO. This Judgment will enable the Paragon shareholders and creditors who were wiped out from the patent claims and resulting bankruptcy to recover substantially all of their losses."

With respect to Weyerhaeuser's statement that it intends to appeal the liability holding and damage judgment, Lee had the following to add: "Judge Murphy's well-reasoned and well-supported damage award follows mainstream legal principles. We are fully confident we will prevail on appeal, just as we have prevailed on every one of Weyerhaeuser's previous challenges to the liability holding. If Weyerhaeuser continues to postpone the day of reckoning through appeal interest will continue to accrue and the judgment will continue to grow. Lambert has both the temerity and the duty to see the case through conclusion, and will."

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Andrews Kurth LLP, founded in 1902, has more than 400 lawyers and eight offices in Austin, Dallas, Houston, London, Los Angeles, New York, The Woodlands and Washington, DC. The firm has an international client base and has experience in all major industries and areas of business law.