

Diacetyl Litigation Update: Consumer Pops Case, Prevails in Lawsuit

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In a **Colorado federal court**, a plaintiff named Wayne Watson argued that he had a rare lung disease caused by inhaling diacetyl vapors from microwave popcorn bags popped from his own microwave. He claimed in court that he made and consumed two to three bags a day of microwave popcorn on a regular basis for years. The microwave popcorn in question was made at the Gilster-Mary Lee plant in Jasper, Missouri, and distributed by a prominent retail food chain. On September 18, 2012, a Colorado jury awarded Mr. Watson nearly \$7.3 million dollars against both Gilster-Mary Lee and the retail food chain. The award included \$5 million in punitive damages. **Mr. Watson is the first consumer to prevail in a lawsuit against a maker or seller of microwave popcorn.**

Litigation related to diacetyl has been around for over a decade. The first lawsuit making diacetyl-related claims was filed back in 2001, when 30 microwave popcorn workers in Jasper, Missouri alleged that they contracted lung disease from inhaling diacetyl while working inside the Gilster-Mary Lee plant. In that case, the workers relied on a report issued by the National Institute of Occupational Safety and Health (NIOSH) that linked the workers' disease to the ingredient diacetyl contained in butter flavoring. The workers then sued butter flavoring manufacturers whose product included the added ingredient diacetyl. Several Gilster-Mary Lee workers' cases were tried to Missouri juries. Some of the workers won verdicts. In some of the workers' cases, the jury awarded defense verdicts. Punitive damages were never awarded in any of the Missouri cases.

Following the Missouri filings, microwave popcorn workers in other plants filed lawsuits in other states and jurisdictions in the ensuing years. Plaintiff workers continued to sue the butter flavoring manufacturers, but over time turned their attention and focus to diacetyl ingredient suppliers and the plant facilities (i.e., Gilster-Mary Lee) where the workers were employed.

The first microwave popcorn consumer case, which was initiated by Mr. Watson, was not filed until January 2008. Indeed, only a few such consumer cases have been filed since then, predominantly against the makers, suppliers, and sellers of microwave popcorn. But given Mr. Watson's recent success, and the overwhelming popularity of microwave popcorn in American households, it is not difficult to envision the increased filing of lawsuits similar to Mr. Watson's in the future.

The diacetyl landscape is changing, as the litigation is not only expanding to consumers, but also to industries that have no connection whatsoever to microwave popcorn. Just last month, a second coffee-related diacetyl lawsuit was filed in Jackson County, Missouri. In that case, the plaintiff is suing his former employer and several diacetyl-containing flavorings suppliers alleging his exposure to coffee volatiles, including diacetyl, when transferring coffee beans inside the facility, caused his lung disease.

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