

The company sold consumer products. The products were enclosed in vinyl covers which contained certain levels of DEHP. Initial testing before my firm's entry into the case, indicated that the products were not Proposition 65 compliant. On that basis the client reformulated the products. After my entry into the case, and given the hard line taken by the plaintiffs, I engaged experts who were very familiar with Proposition 65 and the manner in which testing should take place. Following the chemist's testing results, I engaged one of the best toxicologists in the US. The toxicologists testing results revealed that the products, both in their original state, and after re-formulation were compliant with Proposition 65.

The Attorney General's letter to plaintiff's counsel of April 2012 revealed plaintiff's expert to all who read the letter posted on the AG's web-site. There are problems on several bases with plaintiff's position and their expert, in light of the letter as it relates to DEHP. In short, the AG's letter requested that plaintiff's attorney withdraw their Proposition 65 notice letter in a particular case. But the letter also laid bare the issues that make the plaintiff's future suits vulnerable to legal and factual defenses when DEHP is involved.

A relatively small amount of product had been sold in California. The product lines were being discontinued for reasons that are not important, and thus there was no potential for on-going liability.

I offered to exchange my expert results with plaintiffs, but they declined and only wanted to see our results. I told them what the results were in general terms. It was also pointed out that I had two clients, and they could split expenses if the cases were to be tried. It remains an open question as to whether or not plaintiff's expert actually tests each and every individual manufacturer's product when similar products are lumped into a category.

They continued to insist on a civil penalty. Finally we agreed to a very small civil penalty based only on cost of legal fees and costs generally.

A total settlement was reached allowing the client to pay somewhere between 25% and 35% less than these types of cases are costing for resolution depending on the particular factual setting of each case.