

DOUGLAS J. NILL

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In the movie “A Civil Action,” an attorney risks it all on a lawsuit against an international corporation. He and his law firm sink everything into the case, go deep into debt and end up settling it at a loss just to stop the bleeding.

Minneapolis attorney Douglas J. Nill also went up against an international corporation, BASF, and sank everything into the case. He worked without pay for the nine years it took to litigate.

But Nill won.

Now there is more than \$62 million available to farmers that a jury said BASF defrauded when it sold two identical herbicides at different prices, exploiting federal regulations to force farmers into buying the more expensive product.

Peterson v. BASF Corp. turned into one of those cases that lasts so long, it earns Roman numerals after its name. The action set national precedent as the first case involving deceptive marketing of a federally regulated product to reach a verdict.

The bottom-line issue was whether a case brought under New Jersey’s Consumer Fraud Act was pre-empted by federal law.

The suit was filed in 1997 and involved a five-week trial, three trips to the Minnesota Court of Appeals, five trips to the Minnesota Supreme Court and two trips to the U.S. Supreme Court.

The case was a huge risk, and Judge Michael J. Kraker in the 9th Judicial District has preliminarily approved a \$29 million fee, subject to possible objections by class members. Kraker said the fee fairly reflects Nill’s great risk and success and represents a 3.69 multiple of the lodestar amount of \$8,733,949 determined by current hourly rates.

“This is not a settlement case with minimal monetary recovery for the class,” the judge wrote in his order. “This was a marathon of litigation spanning nine years.”

The rest of the fund after expenses of distribution and reimbursement of costs will be distributed on a pro rata basis to class members, with an incentive payment to the 11 named plaintiffs.

It takes a high-risk mentality and an entrepreneurial spirit to take on a case like this, sweating it out for almost a decade while working full time on other files to keep his practice going. Nill says he was able to keep going — despite the calls from bill collectors and the repossession of his truck — because he knew he was riding a winner.

Raised on a ranch in North Dakota, Nill’s agenda always was to practice agricultural law. That’s how he marketed himself, and it was an advertisement that allowed Ron Peterson, the named plaintiff, to find him.

“You create your own luck,” Nill says. But he is quick to point out that he received a lot of help and support along the way, from co-counsel Hugh V. Plunkett of Phoenix and J. Michael Schwartz of Minneapolis, to his office mates at Furber Timmer Zahn who fed Nill cases and carried him when he couldn’t pay the rent.

The future is an unplowed field for Nill. He isn’t sure which direction his law practice will take, although he doesn’t think he has the stamina for another epochal case.

He may just return to his roots.

“I may go back to North Dakota and farm until my money’s all gone,” he laughs.

— **Barbara L. Jones**

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OF
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DOUGLAS J. NILL

Born: Oct. 3, 1958; Ellendale, N.D.

Education: Hamline University School of Law, J.D., 1988; North Dakota State University, B.S., 1981

Employment: Douglas J. Nill, solo practitioner, 1990-present; U.S. District Court for the Northern District of Iowa/Southern District of Iowa, law clerk, 1989-90; 10th Judicial District of Minnesota, law clerk, 1988-89

Professional Associations: Hennepin County Bar Association, Minnesota State Bar Association

Community Activities: Church

Hobbies/Interests: Farming, skiing

Personal: One child

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