

Ex-Troutman Sanders Antitrust Head Sues Celeb Chef's Eatery

Jennifer Henderson, The Am Law Daily

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One order of coq au vin—but hold the metal wire, s’il vous plaît.

When Barry Brett started in on the French chicken dish at celebrity chef Daniel Boulud’s DB Bistro Moderne in New York City back in February, the retired Troutman Sanders antitrust head had no way of knowing that he would face a near-death experience just days later, said his lawyer Elizabeth Eilender, of counsel at New York’s Jaroslawicz & Jaros.

Eilender is representing Brett, a Florida resident, in a personal injury suit filed on April 15 in Manhattan federal court against 44th Street Restaurant LLC, the Boulud-backed entity that owns the popular midtown eatery, which specializes in French bistro cuisine.

The New York Post first reported this week on the dispute between Brett and DB Bistro Moderne. The suit, as noted by Eilender and its seven-page complaint, claims that an object became lodged in Brett’s throat after he and his wife dined at the restaurant on Feb. 28 of this year.

After initially not realizing the seriousness of the situation, Brett had a CAT scan completed once he returned home to Florida. Eilender added that Brett—a veteran antitrust litigator whose own clients have included billionaire businessman William Koch—was subsequently examined by attending physicians, who determined that he had a “raging infection” that required emergency surgery.

Brett's complaint states that the mysterious object identified by his surgeon turned out to be a "2.5 cm wire metal bristle commonly used to clean commercial grills and stoves." To make matters worse, Eilender said that Brett was also infected with the deadly and "extremely difficult to eradicate" bacteria *Klebsiella*.

"Fortunately they caught it and aggressively treated him with surgery and extensive IV antibiotics," added Eilender, who is also representing another client caught up in litigation filed against troubled real estate heir Robert Durst.



But Brett's own troubles weren't over. His complaint, which notes that he is seeking to recover all of his damages incurred by DB Bistro Moderne and legal costs, claims that he was confined to intensive care for a week. Brett (pictured right) also alleges that he developed a fear of eating and was left permanently deformed by his surgery and unable to work.

"As a result of defendant's recklessness, carelessness and negligence, [Brett] was caused to suffer severe and permanent personal injuries ... cosmetic scarring and deformity; fear of eating; fear of dying; emotional distress; extreme pain and suffering; mental anguish and distress; unable to eat regular to date; unable to attend to his usual duties and vocation ... all of which damages are permanent in nature and continuing into the future," according to his complaint.

In an answer to Brett's complaint filed on June 15, DB Bistro Moderne denied allegations of negligence. Joseph Wodarski III, of counsel with Wilson Elser Moskowitz Edelman & Dicker in Stamford, Connecticut, is advising the defendant in the case. In an email to *The Am Law Daily*, Wodarski said that the firm "does not comment on pending litigation."

DB Bistro Moderne did not return a request for comment Thursday, nor did Brett himself. His lawyer, Eilender, told *The Am Law Daily* that the litigation is "in the middle of discovery." Court records show that the discovery process should be completed by March. (Eilender added that due to strict deadlines in federal court, the case should be resolved within a few months.)

Asked how Brett was faring in the aftermath of his chicken dish gone wrong, Eilender said that her client is "doing well under the circumstances, but still has some residual sensitivity when he swallows. It was a very frightening ordeal that he and his wife went through."

"I'd like to see the restaurant take responsibility for the damage caused and to fairly compensate my client," added Eilender. "We want to figure out why this happened and make sure it doesn't happen again."

Property records show that Brett and his wife sold a home in Southampton, New York, for \$548,000 in May. Back in 2013, sibling publication *The Litigation Daily* mentioned Brett's work, alongside Boies, Schiller & Flexner's David Boies, representing subsidiaries of Oxbow Carbon & Minerals in an antitrust suit filed against Union Pacific Railroad Co. and BNSF Railway Co. alleging that the defendants fixed freight prices.

Barry Brett, a former Troutman Sanders antitrust leader who has retired to Florida, is caught up in a federal court fight with New York power lunch spot DB Bistro Moderne over a piece of metal wire he had to have surgically removed after consuming a chicken dish at the Daniel Boulud-owned establishment, which is represented by Wilson Elser.