

Jury awards couple \$104M in Vegas hepatitis case

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A Nevada jury found drug companies liable Wednesday for \$104 million in damages in a third product liability lawsuit stemming from a hepatitis C outbreak four years ago at Las Vegas outpatient colonoscopy clinics owned by a doctor now facing state and federal criminal charges.

The same Clark County District Court civil jury that on Monday awarded \$14 million in compensatory damages to Michael Washington and his wife, Josephine Washington, spent less than two hours deliberating before deciding Teva Parenteral Medicines Inc. should pay the couple \$60 million in punitive damages and Baxter Healthcare Corp. should pay \$30 million.

Michael Washington, 71, a retired Air Force technical sergeant and Vietnam War veteran, declared himself relieved after four years of medical uncertainty, untold strain on his 31-year marriage and the more than four-week trial.

He alleged in his February 2008 civil lawsuit that he acquired hepatitis C during a colonoscopy in July 2007.

"This jury made a wise and good decision," he said outside the courtroom. "What came out in this trial, no one else should have to go through." ...

Bloomberg

Teva, Baxter Must Pay \$90 Million Punitive Damages for Propofol

By Jef Feeley and Valerie Miller - Oct 13, 2011

A jury said Teva Pharmaceutical Industries Ltd. (TEVA) and Baxter International Inc. (BAX) must pay \$90 million in punitive damages for selling reusable vials of the anesthetic Propofol that a colonoscopy patient blamed for his hepatitis.

Jurors in state court in Las Vegas yesterday ordered Teva Parenteral Medicines Inc. and Baxter Healthcare Corp. to pay so-called punishment damages for selling Propofol in vials large enough to be reused by doctors. Lawyers for Michael Washington and his wife alleged the retired U.S. Air Force mechanic was diagnosed with Hepatitis C in 2007 after getting the anesthetic from a reused vial.

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Jurors in Washington's case deliberated more than three hours yesterday before finding Teva should pay \$60 million in punitive damages and Baxter should pay \$30 million, bringing the total awarded to Washington and his wife, Josephine, to \$104 million. The same panel awarded the couple a total \$14 million in compensatory damages Oct. 10. That was \$4 million more than the Nevada residents' lawyers had originally sought in actual damages.

"I'm relieved it's over and I hope this verdict stops this from ever happening to anyone else," Washington said in a interview outside the courtroom.

Teva makes Propofol and San Francisco-based McKesson Corp. (MCK) serves as its current U.S. distributor. Baxter sold the drug for Teva until 2009, according to court filings. McKesson isn't a defendant in Washington's case. Teva has agreed to cover all damage awards arising from the Nevada cases on behalf of the distributors, according to court filings.

Oversized Vials

The drug is an intravenous agent used for sedation or anesthesia, according to Teva's website. The patients' lawyers allege Teva intentionally sold Propofol in oversized vials to encourage doctors to reuse them, even with the risk of spreading blood-borne diseases such as hepatitis.

In the first Propofol case to go to trial in Las Vegas, jurors awarded Henry Chanin, a private-school principal, and his wife \$5.1 million in compensatory damages and \$500 million in punitive damages against Teva and Baxter. Chanin argued he developed Hepatitis C after getting tainted Propofol during a colonoscopy.

Teva faces almost 300 lawsuits stemming from a hepatitis outbreak in southern Nevada, the company said in a regulatory filing last month. Probes by Nevada health officials and regulators from the federal Centers for Disease Control and Prevention blamed the reuse of Propofol vials for infecting patients with hepatitis.

Last year, a state grand jury indicted Dr. Dipak Desai, who ran the Endoscopy Center of Southern Nevada at the time of the outbreak, on criminal charges. Many of the hepatitis-related cases were linked to that colonoscopy clinic. Desai also faces federal charges over the outbreak.

Damage Guidelines

During arguments over punitive damages yesterday, Friedman told jurors Teva “repeatedly chose do to the wrong thing” in its Propofol marketing and should be punished for its miscues.

He asked the panel to award as much as nine times the \$7 million it awarded Washington and his wife in compensatory damages against Teva and as much as six times against Baxter.

The U.S. Supreme Court’s guidelines for punitive damage verdicts limit the amount of acceptable awards to no more than nine times the compensatory damages handed down.

In their argument, lawyers for Teva and Baxter urged jurors to forgo handing down punitive damages, saying the companies’ Propofol marketing tactics weren’t “despicable.”

By ordering the drugmakers to pay a total of \$14 million in compensatory damages, the panel made clear to company officials “that we didn’t get it right,” Glenn Kerner, one of Teva’s attorneys, said. “We heard you loud and clear.”

More Profitable

Lawyers for Washington argued that Teva pushed sales of large Propofol vials to Nevada colonoscopy clinics because they were more profitable while knowing the jumbo-sized containers increased the risk of the spread of blood-borne diseases such as hepatitis.

Attorneys for Teva and Baxter countered that improperly sanitized medical equipment, not reused Propofol containers, were to blame for the hepatitis outbreak and drugmakers shouldn’t be held responsible for colonoscopy clinics’ shoddy medical practices.

“This is the third time a jury has rejected claims” that doctors and their staffs alone caused the hepatitis outbreak, Rick Friedman, one of Washington’s lawyers, said in an interview.

The civil case is Washington v. Endoscopy Center of Southern Nevada LLC, 07A572224, District Court for Clark County, Nevada (Las Vegas).

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