

TOP DEFENSE WINS OF 2004

Wins on each coast topple the dominoes

By: June D. Bell

CASE TYPE: products liability

CASE CITES: *Kronfeld v. Novartis Pharmaceuticals Corp.*, No. L-003034-02 (Middlesex Co., N.J., Super. Ct.), and *In re PPA Litigation*, No. JCCP-4166 (Los Angeles Co., Calif., Super. Ct.)

FOR THE DEFENSE: In California, Jan E. Dodd and Aton Arbisser of Kaye Scholer's Los Angeles office. In New Jersey, Gita Rothschild and John F. Brenner of McCarter & English's Newark, N.J., office; Nathan Schachtman of McCarter & English's Philadelphia office; and James Herschlein of Kaye Scholer's New York office

PLAINTIFFS' LAWYERS: In California, Mark P. Robinson Jr. of Robinson Calcagnie & Robinson in Newport Beach, Calif.; and Ramon Rossi Lopez of Lopez, Hodes, Restaino, Milman & Skikos of Los Angeles. In New Jersey, Jerry Kristal, Ellen Relkin and John Broadus of Weitz & Luxenberg of Cherry Hill, N.J., and New York

TWO CONCURRENT products liability trials held on opposite sides of the country reached the same conclusion: Both were defense wins

CHOOSING THE TOP 10 DEFENSE WINS

IN CHOOSING THE best defense wins of 2004, *The National Law Journal* considered the obstacles that defense attorneys encountered, such as plaintiff-friendly venues, the amount of damages at stake and if similar cases to be tried would be affected.

This was the first year that the NLJ considered bench verdicts. Nearly 100 submissions from across the country were received by the NLJ, and dozens of defense counsel were interviewed and solicited for defense wins that merited consideration. The list was painstakingly whittled to the 10 cases presented in this section.

for Novartis Consumer Health Inc.

The pharmaceutical company is one of several facing lawsuits for selling products containing phenylpropanolamine (PPA), which was found in over-the-counter appetite suppressants like Dexatrim and decongestants like Triaminic. The U.S. Food and Drug Administration declared PPA unsafe in 2000 and advised that it be taken off the market after studies linked its use to an increased risk of hemorrhagic strokes.

Though cases are still pending against the pharmaceutical companies that made the products, the two January 2004 defense verdicts—one in California and the other in New Jersey—put a damper on plaintiffs' expectations of substantial rewards, said Randolph S. Sherman, national coordinating counsel for Novartis. He is a partner in the New York office of Kaye Scholer.

"Since the verdicts, we've reduced our inventory by 60%," he said, mostly through dismissals. He declined to say how many cases were pending nationwide.

The plaintiffs in California and New Jersey were women who claimed that they suffered debilitating strokes after using over-the-counter products containing PPA. Two plaintiff's cases in California were tried together against Novartis.

California defense lawyer Jan E. Dodd said her trial mantra was "billions of doses, decades of safety." Dodd, a partner in Kaye Scholer's Los Angeles office, emphasized PPA's safety record by citing studies that showed no link between PPA and strokes.

The defense picked apart a controversial Yale epidemiological study—funded by the drug companies themselves—that prompted the FDA's advisory. The studies were flawed, Dodd said, because "researchers were trying

to find something significant" to justify six years of work and \$5 million in funding.

She also explored with jurors why the plaintiffs' medical conditions, including obesity and undiagnosed diabetes, put them at a high risk for strokes.

Though the California trial started first, the New Jersey trial moved faster, reaching a verdict on Jan. 16, 2004, after about five weeks of trial.

"The jury never really reached more general liability questions because they found the drug did not cause [the plaintiff's] stroke," said Jerry Kristal, who represented the New Jersey plaintiff. "The case never got past point one." He is a partner in Weitz & Luxenberg in Cherry Hill, N.J. The verdict is being appealed.

Six days later, Novartis attorneys scored another win after an 18-week trial in California. Those verdicts are also on appeal. Defense lawyers have since won two more and lost one. "I think the plaintiffs' appetite for these cases is not very big anymore," Dodd said. "We demonstrated to them that maybe they were a little blind in these cases."

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