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Phila. Jury Slams Makers of Xarelto With \$27.8M Verdict

Hartman v. Janssen

\$27.8 Million Verdict

Date of Verdict:

Dec. 5.

Court and Case No.:

Philadelphia C.P.

Judge:

Michael Erdos.

Type of Action:

Products liability.

Injuries:

Bleed.

Plaintiffs Counsel:

Gary Douglas of Douglas and London, New York; Ned McWilliams of Levin Papantonio, Pensacola, Florida; Michael Weinkowitz of Levin Sedran & Berman, Philadelphia.

Defense Counsel:

Beth Wilkinson of Wilkinson, Walsh + Eskovitz, Washington, D.C.

Plaintiffs Expert:

David Kessler, labeling.

Defense Expert:

Tanya Dutta, Hawthorne, New York.

Comment:

A Philadelphia jury awarded nearly \$28 million to the plaintiffs in the first bellwether trial to take place in state court over the blood thinner Xarelto. The verdict came after three straight losses for plaintiffs in federal court.

The jury handed up the verdict against Bayer and Janssen Pharmaceuticals on Dec. 5, awarding plaintiff Lynn Hartman \$1.8 million in compensatory damages and \$26 million in punitive damages. The verdict came after nearly one month of trial before Philadelphia Court of Common Pleas Judge Michael Erdos.

Hartman was the first bellwether trial to begin in state court. Over the summer, defendants won all three cases that went to trial from the consolidated litigation being handled in federal court. More than 18,000 cases are pending in the federal multidistrict litigation over Xarelto, which makes it the second largest litigation nationwide, second only to the consolidated pelvic mesh litigation. More than 1,500 Xarelto cases are pending in Philadelphia.

The mass tort is focused on claims that the drugmakers failed to adequately warn about the danger of suffering a severe bleed, especially when patients took Xarelto in combination with Aspirin.

Hartman was closely watched by attorneys given the difficult time plaintiffs have had in federal court, and, although most of the trial focused on the label and the drug's ability to cause Hartman's bleed, the litigation took a few contentious and unexpected turns over the past month.

The start of the trial was delayed after the plaintiffs alleged a Janssen sales representa-

tive had improperly contacted a witness prior to an important deposition. Although the judge allowed parties to depose the sales rep, the judge ultimately denied the plaintiffs' requests, and declined to block the witness' testimony.

Also, during closing arguments, the trial took a political turn, with attorneys from both sides referencing fake news, growing xenophobia and even a quote from Michelle Obama.

Lead trial counsel for the plaintiffs, Gary Douglas of Douglas and London, said the verdict was "vindication."

"This was a great verdict for Mrs. Hartman and a great win for exposing the pharmaceutical industry," he said.

In an emailed statement, Levin Sedran & Berman attorney Michael Weinkowitz, a lead attorney for the plaintiffs, said he was pleased with the verdict.

"The serious health complications suffered by thousands of patients could have been avoided if physicians were properly instructed about the risks, and if patients were given the choice to switch to Eliquis and Pradaxa, which are safer and far more effective," he said.

Bayer spokesman Christopher Loder said in an emailed statement that the company plans to appeal.

"Bayer stands behind the safety and efficacy of Xarelto, believes there is no basis in fact for the verdict, including the punitive award, and plans to appeal," he said. "Xarelto's safety and efficacy is supported by both real-world experience with 31 million patients and expert health regulators in 130 countries, and its FDA-approved label provides accurate and science-based information on the medicine's benefits and risks."

A spokeswoman for Janssen, Sarah Freeman, said in an emailed statement that Janssen also plans to appeal.

"This verdict contradicts years of scientific data and the FDA's repeated confirmation of Xarelto's safety and efficacy," she said. "*Hartman* is the fourth Xarelto trial and the first state trial to date. In each of the three federal multidistrict litigation Xarelto trials, juries returned decisions in favor of the company."

The defendants were represented at trial by Wilkinson Walsh + Eskovitz attorney Beth Wilkinson.

—Max Mitchell, of the Law Weekly •

Trucker Argued Plaintiff Turned Too Quickly, Caused Sideswipe

Dejesus v. Fowlds Brothers Trucking

Defense Verdict

Date of Verdict:

Oct. 17.

Court and Case No.:

C.P. Montgomery 2016-09541.

Judge:

Steven C. Tolliver.

Type of Action:

Motor vehicle.

Injuries:

Neck and back pain.

Plaintiffs Counsel:

John L. Aris, Lowenthal & Abrams, Bala Cynwyd.

Defense Counsel:

Sonia Di Valerio, Rawle & Henderson, Philadelphia.

Plaintiffs Expert:

Robert Ranelle, orthopedic surgery, Cherry Hill, New Jersey.

Defense Expert:

Andrew Collier, orthopedic surgery, Philadelphia; Steven Edell, radiology, Wilmington, Delaware.

Comment:

On Oct. 14, 2015, plaintiff Franchesca Rodriguez Dejesus, 25, a custodian, was driving a sedan on Interstate 76 in Philadelphia. Her father was a front-seat passenger.

Intending to merge onto U.S. Route 1, toward her right, Dejesus was in the right lane of the highway. To her left, in the middle lane, was a tractor-trailer, which sideswiped her on the driver's side. She claimed injuries to her neck and left shoulder.

Dejesus sued the tractor-trailer driver, Lauri Hackett, and her employer, Dakotaland Transportation Inc., alleging negligence in the operation of a vehicle.

Fowlds Brothers Trucking Inc. was improperly named as a defendant and was dismissed.

During court-mandated arbitration, Dejesus was determined to receive \$65,000, which Hackett and Dakotaland Transportation rejected.

At trial, Dejesus asserted that she had stopped her car before making the right turn when the tractor-trailer, which was also turning, entered her lane and sideswiped the driver's side of her sedan.

Hackett and her employer maintained that Dejesus was not stopped as she alleged, and it was she who caused the accident. Counsel noted that Dejesus had testified that she was late for work at the time of the accident and counsel argued that she was likely speeding to get to work, took the right

turn too quickly, and entered Hackett's lane of travel, striking the tractor-trailer.

Four days after the accident, Dejesus, complaining of neck pain, presented to an emergency room, where she was examined and released.

On Oct. 21, Dejesus, complaining of neck and low-back pain, presented to a chiropractor, with whom she treated for four-and-a-half months. She was diagnosed with strains and sprains of her cervical and lumbar spine. Treatment included massage and spinal manipulation. Her back complaints resolved during treatment.

Following treatment, Dejesus continued to experience neck pain and radicular pain into her left (non-dominant) shoulder. She began treating with an orthopedic surgeon and a pain-management specialist, who administered a painkilling injection to her cervical spine.

After MRIs and EMGs, Dejesus was diagnosed with bulging at cervical intervertebral discs C5-6 and C6-7, left-sided radiculopathy stemming from C6-7, and tendinitis in the left shoulder.

Dejesus' orthopedic surgeon causally related her injuries and treatment to the accident, and opined that her bulging and radiculopathy were permanent.

Dejesus testified that her continued neck and shoulder pain affect her ability to interact with her children, whom she has trouble lifting. She also has difficulty performing household tasks, such as laundry and grocery shopping, and engaging in social activities, such as dancing. She sought damages for past and future pain and suffering.

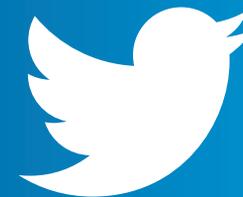
Hackett's expert in orthopedic surgery, who examined Dejesus, testified that she had cervical strain and sprain and left-shoulder tendinitis from the accident, and that she continued to have restricted cervical and shoulder range of motion, and restricted use of her left arm.

Hackett's expert in radiology opined that her MRI and EMG showed pre-existing chronic issues, and nothing traumatic in nature.

The jury rendered a defense verdict.

This report is based on information that was provided by plaintiffs and defense counsel.

—This report first appeared in *VerdictSearch*, an ALM publication •



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