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First Levaquin Test Case Results in Seven-Figure Award

BY SHANNON P. DUFFY
U.S. Courthouse Correspondent

In the first test case to go to trial over side effects from Levaquin, Johnson & Johnson's popular and powerful antibiotic, a federal jury has awarded more than \$1.8 million to a Minnesota octogenarian who claims the drug caused his Achilles tendons to rupture.



MCCORMICK

The jury's award of \$700,000 in compensatory damages and \$1.15 in punitive damages

Levaquin continues on 12

\$6.5 Mil. Settlement Reached for Pallet Fatality

BY ZACK NEEDLES
Of the Legal Staff

The case of a 36-year-old man who died after he was crushed by pallets of paper bags that had spilled off a truck and over the side of an overpass has ended in an accord for more than \$6.5 million.

On Dec. 1, after a six-hour mediation session with retired federal Magistrate Judge Diane M. Welsh of JAMS Inc., the parties reached a settlement 10 days before jury selection was scheduled.

In *Black v. A.W. Statistics Inc.*, according to the plaintiff's settlement memorandum, defendant driver Rafal Wisniewski, an employee of defendant A.W. Logistics Inc., was driving a 53-foot tractor trailer onto the ramp connecting I-81 South to I-83 South on Aug. 18, 2007 at a speed of 72 miles per hour.

Plaintiff Kathleen M. Black, who filed suit

as administratrix of her husband Todd Black's estate, was represented by Jason Daria of Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig in Philadelphia. She said in her memorandum that Wisniewski did not slow down despite posted signs warning that the ramp curved and reducing the speed limit to 50 miles per hour.



DARIA

The tractor trailer rolled onto its right side and struck the side of the overpass, ripping the trailer open and spilling pallets of paper onto the highway below just as Todd Black, a senior IT client services analyst for Cingular Wireless, was driving on the ramp leading from I-83 to I-81, according to the plaintiff's memorandum.

The plaintiff's memorandum said several pallets of paper landed on the front of Black's van, crushing him to death.

According to the plaintiff's memorandum, the day prior to this incident, defendant Mondi Packaging Inc. had contacted one of its brokers, defendant MMD Logistics Inc., about carrying a shipment to York, Pa.

MMD then contracted with defendant Mega Systems Inc. to transport the shipment, according to the plaintiff's memorandum, despite the fact that Mega Systems had received poor driver safety and safety management ratings from the Federal Motor Carrier Safety Administration.

MMD President John Murphy testified during his deposition that while his company had a duty to contract with safe motor carriers for its clients, it only checked to make sure its carriers had insurance and had no policy or procedure in place for checking

Spill continues on 11

Levaquin

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to plaintiff John Schedin is sure to reverberate nationwide, because it was the first of several bellwether cases to go to trial from a pool of more than 2,600 cases pending in state and federal courts.

U.S. District Judge John R. Tunheim of the District of Minnesota is presiding over a federal multidistrict litigation that includes nearly 800 cases and New Jersey Superior Court Judge Carol E. Higbee is presiding over a mass tort litigation that includes more than 1,400 cases.

Attorney Brian J. McCormick Jr. of the Sheller firm in Philadelphia, who was on the trial team in Minnesota and serves on the plaintiffs liaison committee in the New Jersey cases, said the *Schedin* verdict could lead to global settlement talks, especially if it is followed by significant verdicts in test cases expected to go to trial early next year.

In the suits, plaintiffs lawyers claim that Johnson & Johnson and Ortho-McNeil Pharmaceutical Inc. failed to warn doctors that Levaquin showed a significantly higher rate of side effects, including tendon ruptures, than other drugs in its class.

McCormick said that Schedin, 82, suffered ruptures in both Achilles tendons and was not a candidate for surgery due to his age. The injury has had lasting effects, McCormick said, leaving Schedin with a limp and unable to walk up stairs.

A court transcript of an oral argument before Tunheim shows that the issue of punitive damages was hard fought.

Ronald S. Goldser of Zimmerman Reed in Minneapolis, Minn. told Tunheim that revenue from Levaquin from 2001 through 2009 was about \$13 billion and that Johnson & Johnson and Ortho-McNeil wanted to protect it from negative regulatory action in both Europe and the United States that could have devastated those sales figures, according to the transcript.

Goldser said the companies "deliberately disregarded patient rights" by failing to

include more detailed warnings on the drug packaging, and that there was evidence that they "manipulated the scientific literature for their own economic purposes."

"Then on top of that what do they do is, they turn their sales force loose, and their sales force has one mantra: Tell everybody how safe Levaquin is, touting the high safety profile of this drug," Goldser said. "They created a plan to maximize profits while avoiding safety issues."

While evidence was mounting of the drug's dangers, Goldser said, the companies bowed to pressure in Europe and sent "Dear doctor" letters in six countries, but never sent such letters to doctors in the United States.

But lead defense attorney John Dames of Drinker Biddle & Reath's Chicago office urged Tunheim to bar the plaintiffs from seeking punitive damages because there was no evidence of a disregard for patients, according to the transcript.

"Levaquin is efficacious and is very valuable. It is a good drug," Dames said. "Levaquin is in fact the most efficacious, the best antibiotic for upper respiratory tract

infections."

Dames also disputed the claim that Levaquin has a higher rate of side effects than other drugs in its class.

"None of the data that has been developed to this day shows that Levaquin has any greater risk of tendon rupture than any other fluoroquinolone," Dames said.

Dames also refuted the claim that a major study in Europe was manipulated, according to the transcript.

"It is almost a bit Orwellian that an effort by the company to find out what it believed to be would be the most reliable and correct answer to date is taken as conduct to justify the imposition of punitive damages for a product which remains on the market and is to this day considered to be a premier antibiotic with an ample warning about tendon rupture," Dames said in the transcript.

Tunheim later issued an order that said the plaintiffs were entitled to seek punitive damages.

Dames did not return a call seeking comment on the verdict. •