

**Ex-Principal Wins \$4 Million Verdict Against Drug Maker***Connecticut Law Tribune*

Monday, April 30, 2012

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**Kentucky plaintiffs attorney Gregory J. Bubalo claims that drugs used in hormone replacement therapy helped cause an additional 200,000 cases of breast cancer between 1992 and 2002.**

**Ex-Principal Wins \$4 Million Verdict Against Drug Maker**

Hundreds of women have filed suits claiming menopausal treatment causes breast cancer

By CHRISTIAN NOLAN

***Margaret B. Fraser and Joseph T. Fraser v. Wyeth Inc. and Wyeth Pharmaceuticals Inc.***: A retired elementary school principal and her husband recovered \$4 million after a federal jury in Connecticut decided that the woman developed breast cancer as a result of taking a menopause drug.

According to the lead plaintiffs lawyer, this was the first of several expected trials in Connecticut focusing on the drug Prempro. A trial is expected to start in U.S. District Court in Connecticut in May for the estate of a woman who died from breast cancer after taking the drug.

"I've got about 100 individual cases and jointly prosecuted matters" nationwide, said Gregory J. Bubalo, of Bubalo Rotman in Louisville, Ky.

Bubalo said Prempro, manufactured by Wyeth Inc., is a combination of two hormones, estrogen and progestin, and is used in the treatment of menopausal symptoms. The drug is one of several used in what's called hormone replacement therapy, or HRT, whose purpose is to replace the female hormones the body no longer produces because of menopause. Prempro was approved by the U.S. Food and Drug Administration in 1994 and has remained on the market ever since.

The drug, which is still on the market, was largely prescribed from 1992 to 2002, said Bubalo, until a study by the Women's Health Initiative highlighted its link to cancer. The label for the drug indicated that it could be prescribed for menopausal symptoms such as hot flashes, vaginal atrophy and the prevention of osteoporosis.

"Epidemiologists basically have concluded that Hormone Replacement Therapy was responsible for up to 200,000 excess breast cancers in the decade from 1992 to 2002, when HRT was among the best-selling drugs in America," said Bubalo. He said the American Cancer Society then wrote in its Breast Cancer Facts & Figures "that hormone positive breast cancer rates dropped for postmenopausal women after many women stopped using HRT in 2002."

Nevertheless, defense lawyers for the Pfizer-owned drug company have argued that, despite the studies, there's no way

to directly connect any individual woman's breast cancer to the drug. The lawyers also argue that the pharmaceutical company adequately warned users on the label of Prempro of the risk it could cause breast cancer.

Bubalo's first Connecticut client to win a verdict against Wyeth is Margaret "Maggie" Fraser, 65, of Lakeville.

The attorney said Fraser began taking Prempro in the mid-1990s, when she was about 50 years old. Her gynecologist prescribed it after Fraser began experiencing hot flashes. Fraser, according to court documents, testified that she continued taking the drug because "it was working... and because my doctor felt it was safe." Advertisements for the drug at that time also "enhanced" her decision to keep taking it.

Fraser continued taking Prempro until Sept. 11, 2001, when a mammogram revealed abnormal results. A biopsy was performed and in October 2001 she was diagnosed with cancer. The next month, a lumpectomy was performed on Fraser's left breast. After that came six months of chemotherapy and then radiation therapy. She took cancer medications for five years after the radiation therapy.

Treatments killed the skin on her breast and she's had three different breast reconstruction surgeries over a five- or six-year period, said Bubalo.

"She still has scars," the plaintiffs attorney said. "She fortunately is cancer-free right now. If she ever has a recurrence, she'll likely die. So she'll be seeing her cancer doctor for the rest of her life."

Bubalo noted that Fraser, now retired, worked at her job as an elementary school principal while undergoing her cancer treatments. "She was bright and brave in that regard," said Bubalo. "It was not easy."

Her lawyers were able to persuade a jury that Wyeth failed to provide adequate warnings or instructions to her gynecologist regarding the known risk of breast cancer associated with Prempro. The lawyers said if the doctors had conveyed such warnings that Fraser would not have taken the drug. The plaintiffs attorneys also argued that Prempro was an unreasonably dangerous product; that Wyeth was negligent in testing, studying and investigating the risks associated with Prempro; and that Wyeth negligently misrepresented the risks and benefits of Prempro to Fraser's gynecologist.

The trial began March 26 in New Haven federal court before Judge Janet Bond Arterton. The decision came April 18, after the jury deliberated for about five hours over the course of an afternoon and then the following morning.

The jury awarded \$3,750,000 in compensatory damages to Fraser and an additional \$250,000 to her husband, Joseph, for his loss of consortium claim. The jury also decided that Fraser should be awarded punitive damages, which according to Bubalo could potentially raise the verdict to as much as \$8 million or even \$12 million. Punitive damages will be decided separately by the judge, though it's not clear when that will happen.

"We are disappointed with the verdict and will evaluate our legal options once the court completes its work in this case," Pfizer spokesman Christopher Loder said in an e-mailed statement. "Since the case is continuing, it would not be appropriate to comment any further at this time."

Loder said that, according to his tally, and not counting the Connecticut case, seven of the previous eight Prempro cases nationwide that reached a jury resulted in defense verdicts. "There are 11 judgments for Wyeth, 10 of which are final," said Loder. "There are seven plaintiffs' verdicts in effect, three of which are not final as they are being or will be challenged by the company as legally deficient. An award of punitive damages in another of those seven cases is subject to further appeal."

Loder also says that 3,000 other Prempro lawsuits have either been dismissed or withdrawn prior to going to trial.

In the Fraser case, attorneys Kelly A. Evans, of the Law Offices of Snell & Wilmer in Las Vegas, Nevada, and Michelle A. Roberts, of Skadden, Arps, Slate, Meagher & Flom's Washington, D.C., office handled the defense work at trial for Pfizer.

Assisting Bubalo for the plaintiffs were Bubalo Rotman attorneys Steven B. Rotman, Paula S. Bliss, and Kimberly A. Dougherty, as well as local counsel in Connecticut, Neal L. Moskow, of Ury & Moskow in Fairfield. •