

Who Won? The Verdict in the AndroGel Trial

Article By:

Product Liability and Mass Torts

A Chicago jury awarded a single plaintiff \$150 million in punitive damages, finding that AbbVie, Inc. fraudulently misrepresented the safety risks of its drug used to treat low testosterone, AndroGel. But the jury also decided in AbbVie's favor on the plaintiff's strict liability and negligence claims—meaning that they determined that AndroGel did not cause the plaintiff's alleged injury. As a result, the jury awarded no compensatory damages.

This was the first AbbVie-only bellwether case to go to verdict from a multidistrict litigation (MDL) pending in the District Court for the Northern District of Illinois, consisting of over 6,000 individual actions. It is hard to say what the parties and their lawyers will take away from this verdict. Last month's bellwether trial ended in a mistrial.

The plaintiff in this trial used AndroGel over a four-year period and claimed (1) that AndroGel caused his heart attack and (2) that AbbVie marketed the drug knowing it could cause cardiovascular disease, stroke, and other serious injuries, but intentionally failed to alert users and misrepresented the risks.

The jury agreed with AbbVie that AndroGel did not cause the plaintiff's heart attack and awarded him no actual damages. Yet the jury decided that AbbVie should be punished for misrepresenting the drug's risks. In light of U.S. Supreme Court and other court precedents, it is unlikely that a jury award of punitive damages can stand when the jury awards no compensatory damages.

AbbVie's spokesperson has said that the company will attempt to get the punitive damage award overturned. The plaintiff's lawyer is saying that this verdict should send a "powerful message" to AbbVie. Because the jury found that AndroGel did not cause the plaintiff's injuries, the \$150 million punitive damages that they awarded may send a different message than what the jury intended: that is, without any actual damages, the trial judge or an appellate court could overturn the punitive damages award.

Bellwether trials are meant to be representative of other actions in the MDL; they are supposed to help the parties to refine the issues in the remaining cases or set the tone to potentially resolve mass tort actions.

Does the result of this first bellwether trial offer any guidance about how to handle the remaining actions aggregated in the AndroGel MDL? Is either side actually satisfied with the outcome? Perhaps

the impact will not be known until the parties lay out their cases in the next two bellwether trials, scheduled to start in Chicago on September 18, 2017, and on January 8, 2018. It usually takes more than one bellwether verdict to serve their purpose.

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National Law Review, Volume VII, Number 207

Source URL: <https://natlawreview.com/article/who-won-verdict-androgel-trial>