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FILED
APR 30 2010
JUDGE JESSICA R. MAYER

TED BAKER and DEBORAH BAKER, h/w, Plaintiffs, v. ASTRAZENECA PHARMACEUTICALS, LP, et.al., Defendants	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY CIVIL ACTION CASE CODE: 274 (Risperdal/Seroquel/Zyprexa Litigation) Docket No. MID L 1099 07 MT

This matter having been opened to the Court on application by Weitz & Luxenberg, counsel for plaintiffs Ted and Deborah Baker, for an Order for the Court seeking an Order Granting a New Trial, and the Court having considered the submissions of the parties and for good cause shown,

IT IS on this 30th day of April, 2010,

ORDERED that a new trial be granted as to all issues in this matter, and it is further DENIED*

ORDERED that ~~plaintiffs shall serve~~ be posted a copy of this Order within 7 days of the date hereof.

OPPOSED

✓ Opposed

_____ Unopposed

HON. JESSICA R. MAYER, J.S.C.

* Denied for the reasons set forth in the court's written memorandum dated April 30, 2010

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
JESSICA R. MAYER, J.S.C.

MIDDLESEX COUNTY COURTHOUSE
P.O. Box 964
NEW BRUNSWICK, NEW JERSEY 08903-964

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Memorandum of Decision on Plaintiffs' Motion for New Trial

Baker v. AstraZeneca Pharmaceuticals LP, et al.
Docket No. MID-L-1099-07-MT

Defendants: Diane P. Sullivan, Dechert LLP

Plaintiffs: Ellen Relkin, Esq., Weitz & Luxenberg, P.C.

Dated: April 30, 2010

Background

On April 7, 2010, plaintiffs Ted and Deborah Baker ("Plaintiffs") filed a motion for a new trial pursuant on Rule 4:49-1. Defendants AstraZeneca Pharmaceuticals LP and AstraZeneca LP[1] ("Defendants" or "AstraZeneca") filed opposition to Plaintiffs' motion for a new trial. On April 26, 2010, the court was advised that Plaintiffs' counsel waived oral argument and consented to disposition of this motion "on the papers". The following is the court's disposition of Plaintiffs' motion for a new trial.

This matter was the subject of numerous pretrial proceedings and conferences including, but not limited to, a motion for summary judgment and several evidentiary hearings conducted pursuant to N.J.R.E. 104. The court issued written decisions prior to

[1] On April 26, 2010, Plaintiffs filed a "reply" letter brief. Rule 4:49-1 provides "[t]he court may permit reply affidavits." The court rule does not provide for a reply brief. However, the court did read and consider the April 26 submission prior to rendering this memorandum.

hearings conducted pursuant to N.J.R.E. 104. The court issued written decisions prior to trial in this matter, including several memoranda dated February 5, 2010. A comprehensive background of the legal and factual issues in this case is set forth in the court's memorandum of decision on Defendants' motion for summary judgment and is incorporated by reference for the purpose of the court's ruling on Plaintiffs' motion for a new trial.

Jury selection was conducted from February 16 through February 18, 2010. A jury was impaneled and sworn on February 18, 2010. Opening statements commenced on February 22, 2010. Thereafter, the court heard extensive testimony from witnesses (both live and via videotape) on a daily basis (with the exception of February 26, 2010 as the courthouse was closed due to snow) until closing argument. There were a total of sixteen days of trial. The court, in an effort to move the trial for the benefit of the jurors as well as counsel for the parties, started each trial day at or about 9:00 a.m. and ended the trial day at or about 4:00 p.m. Closing arguments were presented to the jury on March 17, 2010. On March 18, 2010, the court charged the jury as to the applicable law. The jury deliberated from 10:00 a.m. on March 18, 2010 until 4:00 p.m. on that date (with a one hour lunch recess). At the end of the day on March 18, the jury asked to return to the courthouse to continue deliberations at 9:00 a.m. on March 19, 2010. The jury resumed deliberations at 9:00 a.m. on March 19, 2010. Just before 10:00 a.m. on March 19, 2010, the jury foreperson reported that the jury had reached a verdict.

The jury found in favor of Defendants. Specifically, in response to Question No. 1 on the verdict sheet, the jury concluded that AstraZeneca provided an adequate warning to Mr. Baker's prescribing physicians concerning the risk of diabetes from Seroquel®.

The jury was polled and the verdict was 7-1 in favor of Defendants. Thus, the jury concluded Plaintiffs failed to prove that AstraZeneca's warning label for Seroquel® was inadequate.

The court requested counsel for Defendants prepare an appropriate form of judgment reflecting the jury's verdict. After receiving the form of judgment from counsel for Defendants and after considering the objections to the form of judgment raised by counsel for Plaintiffs, on April 12, 2010, the court signed an order memorializing the jury's verdict.

Plaintiffs' Motion

Plaintiffs base their motion for a new trial on the ground that the jury's finding was contrary to the weight of the evidence adduced at trial. Plaintiffs argue that, in the face of the overwhelming evidence presented to the jury during the trial, the jury's finding was a miscarriage of justice under the law.

Plaintiffs recount the evidence presented at trial about what AstraZeneca knew or should have known regarding the risk of diabetes and Seroquel®, the timing of that knowledge, and the regulatory obligation to warn of such a risk by changing the Seroquel® label. Primarily, Plaintiffs rely on the testimony and documents of Defendants, especially of Dr. Wayne Geller, who presently is employed by AstraZeneca and was, as of May 2000, the Global Drug Safety Physician with world-wide responsibilities for Seroquel®. Significantly, to support a finding that Defendants had reasonable evidence of an association between diabetes and Seroquel® such that Defendants were required to change the label in accordance with Food and Drug Administration ("FDA") regulations, Plaintiffs rely on a "Safety Position Paper" authored

by Dr. Geller in or about September 2000[2] and a letter to the editor of the Journal of Psychiatrists published in February 2003[3]. Additionally, Plaintiffs argue that the jury overlooked, or failed to consider, the evidence as to misrepresentations made by Defendants to prescribing physicians and other healthcare providers essentially downplaying any association between Seroquel® and weight gain and/or diabetes.

Defendants' Opposition

On April 19, 2010, Defendants filed opposition to Plaintiffs' motion for a new trial. Defendants argue that the jury had the benefit of countervailing testimony from AstraZeneca's witnesses on the issues that form the basis of Plaintiffs' new trial motion. Defendants contend that the jury was able to assess and give appropriate weight to all of the evidence presented during the trial, not just the testimony offered by Plaintiffs, and on the basis of all of the evidence, the jury's verdict is sustainable.

Legal Analysis

A motion for a new trial is governed by Rule 4:49-1. The grounds for a new trial are set forth in the last sentence of subparagraph (a) of the rule. The rule provides that a trial judge shall "grant the motion if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law." R. 4:49-1(a). Case law applying the court rule starts with the notion that there is a "presumption of correctness" of a jury verdict that requires "very considerable respect" to the judgment of the fact finder. Baxter v. Fairmont Food Co., 74 N.J. 588, 597-98 (1977).

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[2] See Plaintiff's trial exhibit PX 0215 attached as Exhibit 3 to the certification of Ellen Relkin, ("Relkin Cert.")

[3] See Exhibit 1 attached to the Relkin Cert.

When considering a motion for a new trial, case law instructs that the trial judge correct only clear errors or mistakes of the jury upon a finding of clear and convincing evidence of "a miscarriage of justice under the law." Romano v. Galaxy Toyota, 399 N.J. Super. 470, 477 (App. Div. 2008) (citations omitted). Jury verdicts are to be set aside sparingly. Boryszewski v. Burke, 380 N.J. Super. 361, 391 (App. Div. 2005), certif. denied, 186 N.J. 242 (2006). On a motion for a new trial, "all evidence supporting the verdict must be accepted as true, and all reasonable inferences must be drawn in favor of upholding the verdict." Harper-Lawrence v. United Merchants, 261 N.J. Super. 554, 559 (App. Div. 1993) (citing Dolson v. Anastasia, 55 N.J. 2, 5 (1969)). Cases wherein a party seeks a new trial based upon weight of the evidence arguments have been rejected if premised "upon [the moving party's] expert's testimony . . . with inadequate consideration for the countervailing testimony . . . ." Boryszewski, supra, 380 N.J. Super. at 370. A motion for a new trial premised "on the assumption that the jury was required to accept all the evidence favorable to [the moving party]," ignores the controlling case law and applicable court rule. See Kozma v. Starbucks Coffee Co., 2010 N.J. Super. Lexis 44, at *8 (App. Div. March 19, 2010).

There is ample evidentiary support in the record as a whole to sustain the jury's finding of no cause of action against Defendants. The jury heard and considered the conflicting testimony, including expert testimony, submitted on behalf of the parties. The jury heard testimony from AstraZeneca witnesses, including Drs. Geller and Leong, on the subject of weight gain and diabetes and the company's knowledge of any association between Seroquel® and the "adverse events" allegedly linking Seroquel® to diabetes. Further, the jury heard testimony from Mr. Baker's treating physicians (Drs. Barnes and Kovac) confirming their prescription of Seroquel® with due consideration of the

information, including possible risks, set forth in the drug's label. In addition, the jury heard testimony from Plaintiffs' FDA regulatory expert, Dr. Plunkett, on the regulations governing warnings for prescriptions drugs and balanced her testimony against the testimony offered by Defendants on the same issue.

The court rejects the argument that Plaintiffs proved there was "reasonable evidence" of an "association" between Seroquel® and diabetes during the trial such that the jury's verdict is against the weight of the evidence. See 21 C.F.R. § 201.57(e). Defendants offered several witnesses who testified at trial, including Dr. Geller, that there was no such association. Plaintiffs' counsel attempted to discredit the testimony of Dr. Geller from the moment he took the witness stand. On direct examination,[4] the first question asked of Dr. Geller was whether, in response to all questions that would be asked by Plaintiffs' counsel regarding the 2000 "Safety Position Paper," it would be fair to say that Dr. Geller would respond, or take the position, that the document was a "draft." Dr. Geller was examined at length by Plaintiffs' counsel on the subject of an association between diabetes and Seroquel® and the jury had an opportunity to assess the credibility and inherent believability of his testimony.

Conclusion

For the foregoing reasons, Plaintiffs' motion for a new trial is DENIED. The court will enter a form of order accordingly.

JESSICA R. MAYER, J.S.C.

[4] Dr. Geller was called as a witness during Plaintiffs' case.