

After string of defense verdicts, woman wins \$4M in Prempro breast cancer trial

by Sylvia Hsieh

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A 65-year-old elementary school principal has won a \$4 million verdict in Connecticut federal court against the maker of the menopause drug Prempro for causing her breast cancer.

The plaintiff will also collect punitive damages imposed by the jury, but the judge will decide the amount, which could go as high as \$8 million, or double the compensatory award.

Of the thousands of cases pending, this was the first Prempro breast cancer trial in New England.

Litigation over the hormone therapy drug has been a see-saw, featuring some huge verdicts, including [\\$72.6 million to three Pennsylvania women](#) last year and [\\$34 million to an Illinois woman in 2009](#), as well as several defense wins for drug maker Pfizer.

Winning attorney Gregory Bubalo said that while many cases are very strong from the plaintiffs' perspective, Pfizer can control the litigation.

"They can choose which cases to try and settle the ones they don't want to try, then present it as though cases are going their way," said Bubalo, who practices at the 10-attorney firm Bubalo Rotman in Louisville, Ky. "To the extent that defendants have won the last few cases, [there] may simply be issues specific to those cases."

For example, he said, individual facts can eliminate certain claims in a Prempro case, such as a statement by a plaintiff that if she had seen the warning label about breast cancer she wouldn't have taken the drug.

"Of course, that kills the failure-to-warn case if the plaintiff admits the warning is adequate for her," he said. On the other hand, other claims, such as strict liability, may survive even after such an admission, he noted.

Defense attorney Michele Roberts said she could not comment about the case.

Pfizer also did not respond to requests for comment before deadline.

'20 red flags'

Margaret Fraser took Prempro, a combination estrogen-progestin hormone therapy, for menopausal symptoms for more than five years from approximately 1995 to 2001.

Fraser stopped taking the drug the day after she had a mammogram revealing breast cancer.

Her legal claims against Wyeth were strict liability, failure to warn, negligence in failing to test and study the risks of breast cancer, and negligent misrepresentation of the drug's risks and benefits.

During the three week trial in federal court, Bubalo argued Wyeth ignored 20 red flags dating back four – starting with an internal memorandum as early as 1976 indicating Wyeth knew of a possible association between breast cancer and combination hormone therapy.

A common defense argument is that breast cancer has unknown causes.

But Bubalo argued that menopausal women with naturally low hormone levels who develop hormone-positive breast cancer can point to replacement hormones as the cause.

"By replacing these hormones, Prempro fuels hormone-dependent rumors that many women, like Maggie, would never have experienced in their lifetime," Bubalo said.

Fraser's gynecologist testified that the warning labels were confusing and that had he been given all the information that's now on the 2011 label, he would have "probably given her less of an option to go on it," and only allowed her to take it if she agreed to accept the higher risk of breast cancer.

A key expert for the plaintiff was epidemiologist Dr. Cheryl Blume, who charted how the rise and fall of breast cancer cases paralleled the popularity and decline of the use of Prempro.

Bubalo presented video of the author of a 2002 World Health Initiative study estimating that approximately 200,000 women developed unnecessary cases of breast cancer between 1992 and 2002 because of the widespread use of HRT.

"Maggie was one of those women who suffered because of this drug's overuse. When the true risks and benefits were known, millions of women stopped taking hormone replacement therapy, and, with that, breast cancer rates fell for the first time in decades for women within menopausal age. It's shocking," said Bubalo.

'Children kept her mind off herself'

Although her cancer is in remission, Fraser testified about how the disease has changed her life.

"She is cancer-free, but if it recurs it's a death sentence," said Bubalo.

Fraser underwent an aggressive form of chemotherapy, then was treated with radiation and took Tamoxifen and Aromasin over the next five years. She also had a partial mastectomy and a series of operations to reconstruct her breast.

According to Bubalo, it took a long time for Fraser to regain pride in her appearance. She also testified about the overwhelming fatigue she felt during radiation treatment – a type of fatigue that taking a nap does not get rid of, he said.

Through it all, Fraser continued working as a principal at an elementary school.

"She kept working because the children kept her mind off herself," said Bubalo.

A 12-person jury, led by a foreman who is a U.S. Attorney, awarded \$3.75 million to Fraser and \$250,000 to her husband Joseph.

The jurors, whom Bubalo described as middle-aged and mostly male, also found that punitive damages should be exacted against Wyeth. The trial judge will determine the amount within the next few weeks.

Plaintiffs' attorneys: Gregory Bubalo of Bubalo Rotman in Louisville, Ky.; Neal Moskow of Ury & Moskow in Fairfield, Conn.

Defense attorneys: Michele Roberts of Skadden Arps in Washington D.C.; Kelly Evans of Snell & Wilmer in Las Vegas; James Glasser of Wiggins & Dana in New Haven, Conn.

The case: *Fraser v. Wyeth Inc.*; April 18, 2012; U.S. District Court for the District of Connecticut; Judge Janet Bond Arterton.

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