

Md. jury awards \$18M to former business partner in pharma lawsuit

By: Anamika Roy Daily Record Legal Affairs Writer November 26, 2018

A jury in a federal lawsuit awarded a Rockville scientist \$18 million in a lawsuit against his former business partners.

In a lawsuit filed in U.S. District Court in Greenbelt, Claudio De Simone and ExeGi Pharma LLC alleged VSL Pharmaceuticals Inc., Leadiant Biosciences Inc. and Alfasigma USA Inc. tried to make a copy of a drug De Simone created without having access to the proprietary formula and sold a “knock-off” version of the drug. De Simone also alleged the copy product had never been clinically tested, unlike his product, which underwent extensive clinical research, the lawsuit states.

After a three-week trial and about 12 hours of deliberations, a jury of seven women and two men found last week that the pharmaceutical companies owe De Simone more than \$18 million in damages, including \$15 million for false advertising, nearly \$1.9 million for unjust enrichment and nearly \$1 million for breach of contract, according to online court records.

An attorney for De Simone said Monday that the jury was likely swayed in favor of his client because of “the degree of willful misconduct” on the other side.

“We proved that they were marketing to the general public, that includes some very sick patients who rely on the product my client invented to manage severe symptoms of gastrointestinal diseases,” said Jeremy W. Schulman, one of De Simone’s attorneys, of Schulman Bhattacharya, LLC in Bethesda, on Monday.

“Our clients are just very happy that the jury saw through the defendant’s propaganda and sided with us and is now helping us protect the public in getting the word out,” Schulman said.

De Simone argued that VSL Pharmaceuticals sold a knock-off version of his product under its original brand name “VSL#3,” which is a trademark owned by VSL, and referenced clinic research done for De Simone’s product but not for the copy.

At trial, De Simone argued that the defendants’ product was not the same as his invention and was never tested on humans, ExeGi Pharma said in a press release.

The defense denied the allegations. In court filings VSL Pharmaceuticals, which was founded by De Simone and business partner Claudio Cavazza, said that De Simone agreed to provide the company with all intellectual property related to the “VSL#3” probiotic, “including any pertinent patent rights, trademark rights and scientific know-how.” VSL also argued that it, rather than De Simone, owns the “know-how” to make the probiotic, according to court filings.

Brian Lawrence Schwalb, an attorney for the defense, of Venable LLP in Washington, did not immediately respond to a request for comment on Monday.

De Simone now sells his formula under the name Visbiome with co-plaintiff ExeGi Pharma, the company said.

“I am grateful that the jury saw through the falsehoods of the defendants and ruled in our favor. I created the probiotic product to help patients who had suffered for years with gastrointestinal illnesses and diseases. I never imagined that a multi-national pharmaceutical company and the other defendants would attempt to steal my invention and then pass off an inferior and fake product as mine,” De Simone said in a press release.

De Simone also has pending cases over his product in other countries, including South Korea, India, Switzerland, Italy, Poland and Germany.

“Now I will turn my attention to supporting patients in Europe, Asia and other parts of the world who are at risk of being similarly misled,” he said.

De Simone v. VSL Pharmaceuticals, Inc. et al

Court: U.S. District Court in Greenbelt

Case No.: 8:15-cv-01356-TDC

Judge: Theodore D. Chuang

Proceeding: Jury trial

Outcome: Verdict for plaintiff.

Dates:

Incident: 2016

Suit filed: May 11, 2015

Verdict: Nov. 20, 2018

Plaintiffs’ Attorneys: Jeremy W. Schulman, Jeffrey Samuel Gavenman and Koushik Bhattacharya of Schulman Bhattacharya, LLC in Bethesda

Defendants’ Attorneys: Brian Lawrence Schwalb of Venable LLP in Washington, DC

Counts: breach of contract, unjust enrichment, false advertising, breach of fiduciary duty

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