Defense Verdict for Merck in Third Bellweather Fosamax Trial

December 31, 2010

After hearing more than three weeks of evidence, a New York jury rendered a complete defense verdict for Bryan Cave client Merck Sharp & Dohme in the third Bellweather trial over its blockbuster drug Fosamax. Bryan Cave St. Louis Partner Bettina Strauss co-tried the case with Mike Brock from Covington & Burling. The case, Graves v. Merck, was tried in the Southern District of New York in the multi-district litigation proceedings where more than 1000 cases are pending claiming that Fosamax causes a condition called osteonecrosis of the jaw, which Merck disputes.

Plaintiff Judith Graves sought $7 million in damages claiming that Merck’s osteoporosis medication Fosamax had caused her to get osteonecrosis of the jaw which she claims resulted in her five jaw surgeries to remove and replace portions of her jawbone and a lifetime of difficulty with her jaw. Plaintiff presented two weeks of live testimony from multiple experts from the U.S. and Australia blaming Fosamax for her condition, citing hundreds of articles including from well respected organizations in the medial community that support her position. Strauss and Brock on behalf of Merck presented expert testimony to show that plaintiff’s other medical conditions and the prescription drugs she took to treat them that can weaken the immune system led to an infection that caused her
osteonecrosis. The New York times published an article during the trial featuring the plaintiff, Judith Graves, and recited the many claims by other plaintiffs in the MDL proceedings.

The jury deliberated only two hours before returning a verdict in favor of Merck on all claims. This was the third Bellwether trial over Fosamax (the first tried by Bryan Cave) and was particularly important to Merck, having come on the heels of a second Fosamax trial earlier in 2010 that resulted in a jury verdict for the plaintiff of $8 million. Merck has two defense verdicts to counter one plaintiff verdict.

Stefan Mallen and Brent Roam assisted Strauss with the trial in New York, and Tim Howard assisted from St. Louis. The trial team was also supported in New York by lawyers from Venable in Baltimore and Hughes, Hubbard & Reed in New York.

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