

10 TOP 10

JURY VERDICTS 2009

Top Ten rises again

After years of decline, the Top Ten Jury Verdicts rose dramatically in 2008.

The increase in 2009 was less pronounced, but the average increased again, from \$112 million to nearly \$145 million.

The top award was slightly lower in 2009 – \$370 million versus \$388 million. But two other awards in the \$300 million range, along with five verdicts of \$70 million or more, helped push the average appreciably higher than last year.

The year's top verdict went to five former employees of Guess Jeans mogul Georges Marciano, who claimed that Marciano falsely accused them of stealing from him and used his wealth and connections to dog them with investigations, tax audits and accusations in newspaper ads and on Internet sites. And seven of the Top Ten Verdicts stemmed from per-

sonal injury cases, including two drunk driving accidents, one \$300 million tobacco verdict, and one verdict in the ongoing Prempro litigation against Wyeth Pharmaceuticals.

Lawyers USA compiles the Top Ten Jury Verdicts each year, applying certain ground rules. First, verdicts must be to an individual plaintiff, defined as a single person, family or small group of individuals injured in a single incident who had their claims tried in one case before the same jury.

Second, we do not include business-against-business suits, class actions or consolidated cases. Finally, cases must have been defended – default verdicts and suits against incarcerated individuals are not included.

– Susan A. Bocamazo

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TOP (5) TEN

JURY VERDICTS OF 2009

\$78.75 MILLION

Illinois woman wins \$78.75M Prempro verdict

By Nora Lockwood Tooher
Staff writer

In the largest individual hormone replacement therapy verdict so far, a New Jersey jury awarded \$78.75 million in damages to an Illinois woman who claimed the hormone therapy replacement drug Prempro caused her breast cancer.

The verdict included \$3,747,344 in compensatory damages and \$75 million in punitives against Wyeth Pharmaceuticals, a division of Pfizer.

Connie Barton, 64, took Prempro between May 1997 and May 2002. Barton underwent a left mastectomy and reconstructive surgery following her breast cancer.

In a reverse trifurcated trial, an eight-person jury awarded Barton \$3.75 million in compensatory damages and determined that Wyeth's Prempro caused her invasive breast cancer. Jurors also found that the pharmaceutical maker deliberately ignored evidence that Prempro could cause cancer.

In late October, the same jury awarded \$75 million in punitive damages to Barton, but the amount was sealed for a month until Nov. 23, when another HRT trial in Philadelphia was completed.

The two cases were the first of 16 bellwether trials in HRT mass tort litigation in Philadelphia's Complex Litigation Center, the Philadelphia Court of Common Pleas' center for mass torts litigation.

The total damages of \$78.75 million awarded to Barton are the highest awarded to an individual plaintiff in ongoing HRT litigation.

(The plaintiff in the second bellwether trial in Philadelphia, Donna Kendall, was awarded total damages of \$34.3 million.)

Judge Sandra Moss, who is overseeing the HRT litigation in Philadelphia, said that the amount of punitives was sealed at

Perhaps most damning was evidence that Wyeth ghostwrote dozens of medical articles minimizing the risk of breast cancer.

Wyeth's request to ensure a fair trial in the Kendall case.

Zoe Littlepage, who represented both Barton and Kendall, said she was angry that Barton was not allowed to reveal the amount of punitives she had been awarded at the time.

"It was very unfair for her not being able to talk about it," she said. "Right at the last minute, Wyeth ran in with this emergency motion and kind of muzzled her. It made me very angry and upset.

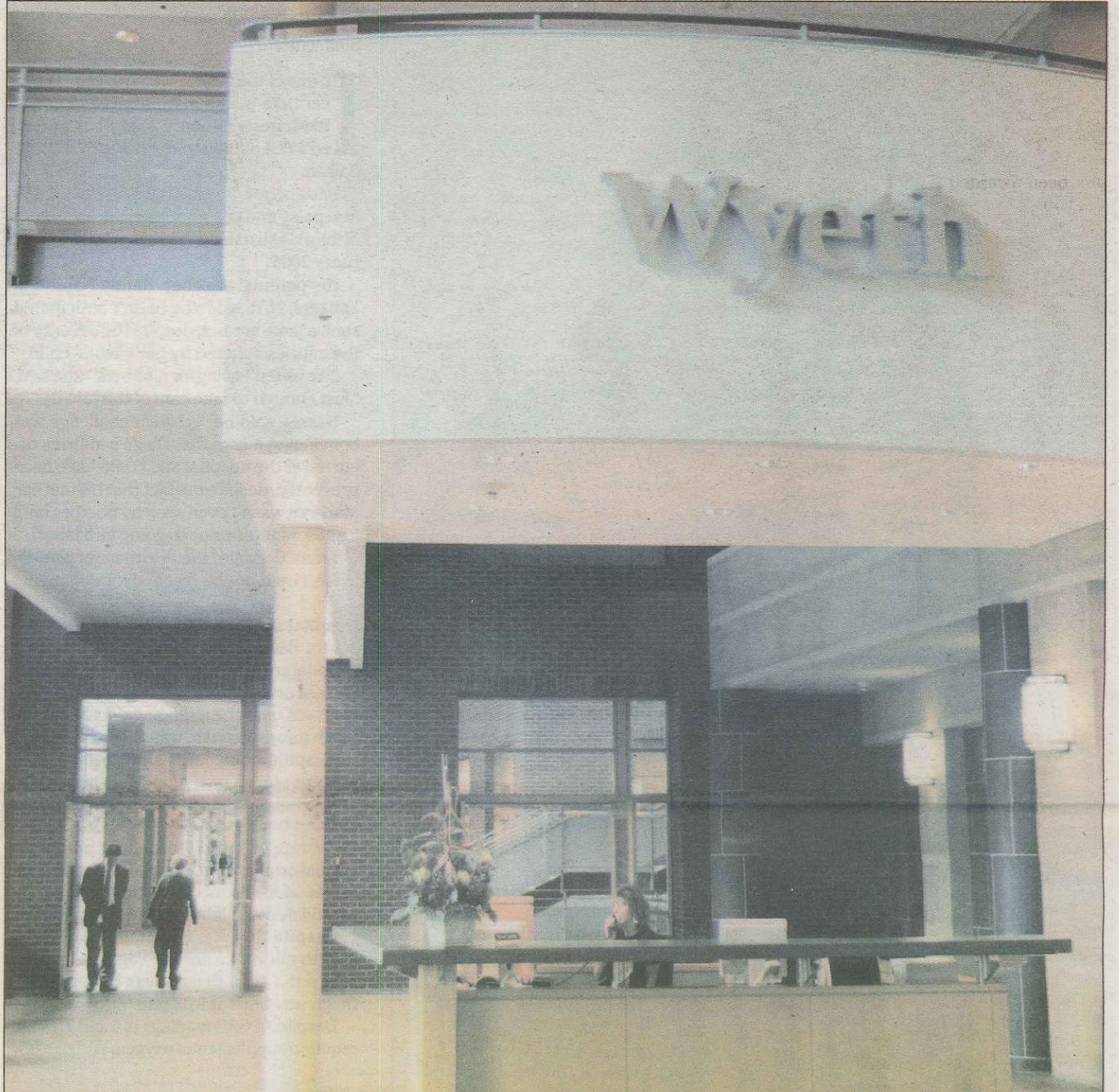
"No one gets to gag other people except Wyeth," Littlepage said.

Jurors outraged

The trial lasted nearly six weeks and was divided into three sections. The first part of the trial focused on causation and damages, the second on liability and whether punitives were warranted and the third on the amount of punitive damages.

Phase One answered the question: Did Prempro cause Barton's breast cancer? Had the plaintiffs lost Phase One, the trial would have been over.

Littlepage said it was difficult to maintain continuity during the trial, especially because there were gaps of several days each between each phase.



AP Photo/Mike Derer, file

"It [was] hard to keep the jury's attention," she commented.

Also, jurors had to award compensatory damages without having "a real picture of [Wyeth's] conduct," she said.

"We could not even talk about Wyeth at all until the second phase," Littlepage said.

Phase Two was the liability phase, which determined whether Wyeth negligently failed to adequately warn Barton's physician about the risks of Prempro, and whether Wyeth's actions were "willful

and wanton."

During the second phase, Littlepage and her partner, Rainey Booth, presented evidence that Wyeth ignored red flags that showed HRT drugs increase the risk of breast cancer. Further evidence showed that the company actively tried to downplay studies by scientific institutions showing those risks.

But perhaps most damning was evidence that Wyeth ghostwrote dozens of medical articles minimizing the risk of breast can-

cer and exaggerating the benefits of hormone therapy. The articles were published in medical journals under independent doctors' names.

A key witness was Wyeth's head of research, who testified in both the first and second phases of the trial. Littlepage said jurors told her after the trial "that he was totally unbelievable."

"His demeanor and credibility really helped the plaintiffs' case," she said.

Phase Three was solely to determine the amount of punitive damages.

Jurors responded "with outrage" to the evidence that the company misled the public and medical community, according to Littlepage.

Jurors deliberated two hours after the first phase and awarded \$3.7 million in compensatory damages on Sept. 25; then deliberated 40 minutes after the second phase before ruling on Oct. 23 that Wyeth was at fault and liable for punitive damages.

The \$75 million in punitives was determined on Oct. 26.

The jury found Wyeth "negligently failed to adequately warn" Barton's doctors about Prempro's cancer risks and that failure played a role in her physician's decision to prescribe the drug.

Defense lawyers were unavailable for comment.

AT-A-GLANCE

Verdict: \$3.75 million in compensatory damages and \$75 million in punitives

State: Pennsylvania

Type of case: product liability

Status: Post-trial motions have been filed by the defense.

Case name: *Barton v. Wyeth Pharmaceuticals*

Date: Compensatory damages on Sept. 25; Punitive damages on Oct. 26

Plaintiff's attorneys: Zoe Littlepage and Rainey C. Booth of Littlepage & Booth in Houston.

Defense attorneys: George McDavid of Reed Smith in Princeton, N.J., Lauren Handler of Porzio, Bromberg & Newman in Morristown, N.J.

Questions or comments can be directed to the writer at: nora.tooher@lawyersusaonline.com