

The Top Ten Jury Awards Of 1991

continued from page 5

his, a 20-year-old college student who was one of the country's leading swimmers.

The jury in that case returned a compensatory damage verdict of \$200,150,000. "It was the first time I ever asked a jury for a figure and got exactly what I asked for," says Robinson. "I'd still like to find some way to collect it."

In compiling the 1991 Top Ten list, only personal injury and tort awards to individuals were considered. Total verdict amounts were treated as including punitive damages and damages for derivative claims such as loss of consortium, but no adjustments were made for pre-judgment interest or reductions through post-trial motions. Where a large award was split among several unrelated plaintiffs, only the amount that went to each individual plaintiff was counted.

Here, then, are the Top Ten Jury Awards of the Year:

1. Products Liability — \$127 Million

The largest tort verdict of 1991 was won by Meyer Proctor, a 70-year-old retired spokesman for the Illinois Department of Mental Health, against the Upjohn Co., makers of the anti-inflammatory drug Depo-Medrol.

Eight years ago Proctor was undergoing an eye operation when his ophthalmologist, Michael Davis, attempted to inject the drug near his eye. Davis inadvertently injected the drug into the eye itself. "Because the drug was opaque, it prevented the doctors from seeing what was going on in the eye or assessing the damage," says Proctor's attorney, Barry Goldberg of Chicago.

In fact, the damage was severe. Within minutes the eye went blind; it then began to shrivel up, causing constant pain to Proctor. Five months and three operations later the injury

still hadn't been reversed, and the eye was removed.

The Depo-Medrol package insert — which had been approved by the FDA — said the drug was safe for injection in some muscles, soft tissue and joints. "The

drug was never approved for use around the eye," says Goldberg. However, Goldberg charges that Upjohn "created a market and supported, advertised and promoted this use to

the ophthalmic community." Among other things, Goldberg says that Upjohn paid for studies of periocular uses of the drug and helped doctors get their research papers published.

Goldberg further claims that Upjohn allowed its marketing department to decide against making animal tissue tolerance tests of the drug, even though it knew as early as 1965 that it could be toxic if injected into the eye.

After a seven-week trial, the jury awarded \$3,047,819.76 in compensatory damages to Proctor, \$100,000 to his wife for loss of society, and \$124,573,750 in punitive damages. The entire award was against Upjohn; the jury found that Davis, who testified that he wouldn't have used the drug if he knew it could cause blindness, was not negligent.

Goldberg presented evidence at trial that Upjohn's net worth was \$1,778,665,000. In his closing argument he suggested that the jury calculate the punitive award as a percentage of Upjohn's net worth. The punitive award was almost exactly 7% of the net worth figure.

According to Jury Verdict Research, Inc. of Horsham, Pennsylvania, the award is the second largest ever in a products liability case. The largest was *Grimshaw v. Ford Motor Co.*, a 1978 verdict for a 13-year-old boy who was severely burned in a Pinto gas tank explosion. The jury in that case awarded \$128,466,280, including \$125 million in punitive damages.

"I believe that this case is to the law involving the drug industry what the Ford Pinto case was to the auto industry," says Goldberg.

Although this is the first lawsuit alleging blindness as a result of a Depo-Medrol injection, Goldberg says it represents "only the tip of the iceberg as to the depth of this problem." He says that numerous people have called him from around the country with reports of similar injuries.

Goldberg faults "loopholes" in FDA regulations which allow drug manufacturers to sell products without performing necessary testing, without disclosing test data and without investigating reports of problems in the field. "Clearly," he says, "legislation is needed to prevent the fox from being the one to watch the chicken coop."

Jury verdict in Cook County Circuit Court, Chicago, IL. Proctor v. Upjohn Co., No. 84L3213. October 18, 1991.

2. Malicious Prosecution — \$86 Million

Linda Tanner lived in the tiny town of Black, Missouri (population: 4), in rural Reynolds County about 125 miles from St. Louis. She worked as a technician at the Reynolds County Memorial Hospital in nearby Bunker, Missouri. In 1987, this small-town Midwesterner found herself swept up into a complex game of international

continued on page 8



Barry Goldberg of Chicago won the second largest products liability award in U.S. history.