

2010 WL 638286 (D.N.H.) (Expert Deposition)
United States District Court, D. New Hampshire.

Karen L. BARTLETT, Plaintiff,

v.

MUTUAL PHARMACEUTICAL COMPANY, INC. and United Research Laboratories, Inc., Defendants.

No. 08-CV-358-JL.

February 20, 2010.

Videotape Deposition of: Robert J. Valuck, Ph.D.

Case Type: Contracts >> Warranty

Case Type: Contracts >> Warranty-Implied

Case Type: Fraud & Misrepresentation >> Fraud - Fraud & Misrepresentation

Case Type: Products Liability >> Pharmaceuticals

Jurisdiction: D.N.H.

Name of Expert: Robert J. Valuck, Ph.D., R.Ph.

Area of Expertise: Health Care-Physicians & Health Professionals >>Pharmacist/Pharmacologist

Representing: Defendant

Appearances.

For the Plaintiff: Keith M. Jensen, Esq.

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For the Defendants: Joseph P. Thomas, Esq.

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Stephen J. Judge, Esq.

Wadleigh Stan & Peters, PLLC

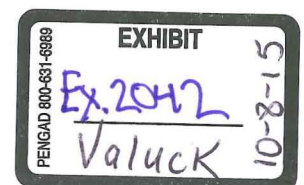
95 Market Street

Manchester, New Hampshire 03101

(Appearing Telephonically).

Also Present: Kathleen Myers, Videographer.

February 10, 2010



PURSUANT TO NOTICE, the videotape deposition of ROBERT J. VALUCK, PH.D. was taken on behalf of the Plaintiff at 555 17th Street, Suite 3400, Denver, Colorado 80202, on February 10, 2010, at 9:01 a.m., before Sandra L. Bray, Registered Diplomat Reporter, Certified Realtime Reporter, and Notary Public within Colorado.

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WHEREUPON, the following proceedings were taken pursuant to the Federal Rules of Civil Procedure.

MR. JENSEN: And with your agreement, Joe, the videographer will say on the record and off the record, if that's okay with you?

MR. THOMAS: Yes, that's fine.

(Recess taken, 9:01 a.m. to 9:09 a.m.)

THE VIDEOGRAPHER: We're on the record on February 10th, 2010 at 9:09.

EXAMINATION

BY MR. JENSEN:

Q. Please state your name for the record.

ROBERT J. VALUCK, PH.D., having been first duly sworn to state the whole truth, testified as follows:

Q. (BY MR. JENSEN) Please state your name for the record.

A. Robert Valuck.

Q. Is there anything that will prevent you today from giving your best testimony? Medications, sleep deprivation, anything like that?

A. No.

Q. Can/does sulindac cause SJS/TEN?

A. I believe it can.

Q. When did you first have that belief?

A. Probably in the mid-'80s. It was during my training in pharmacy school. I don't know the exact date, but it would have been between 1984 and 1987, when I was in training.

Q. You've been retained or hired in other litigations or cases -- legal cases besides this one, correct?

A. Yes.

Q. Okay. And in the past, you've provided opinions as stating whether or not a specific drug or drugs caused or did not cause a given adverse reaction, correct?

MR. THOMAS: Objection to form.

A. Yes. Yes.

Q. (BY MR. JENSEN) In this case, you did not do so, correct?

A. I was specifically asked and I opined on the strength of evidence or the existence of evidence as to whether sulindac may cause SJS/TEN at a higher rate relative to other drugs, and that's specifically what I opined on, but other than that, I did not address other questions.

Q. Okay. Is what you just defined, whether or not sulindac has a higher association or a stronger relationship with SJS and TEN and any other NSAIDS the sole issue upon which you've been asked to opine in this case?

A. That was one question. The other question was just generally can drugs cause SJS/TEN and are the NSAIDs, including sulindac, among those drugs, and then the final was the one I previously stated, which is is there any evidence to suggest that sulindac may be associated with a higher rate relative to other NSAIDs or other drugs.

Q. Okay. The first one you just identified, can drugs cause SJS and TEN, you didn't attempt to conclude -- let me ask a new question. All drugs don't cause SJS and TEN, correct?

MR. THOMAS: Objection to form, foundation.

A. Not to my knowledge, no.

Q. (BY MR. JENSEN) Conversely stated, Dr. Valuck believes that there's many drugs that people take that do not cause SJS and TEN, correct?

A. I would state it that I'm not aware of any evidence that would suggest that all drugs cause SJS or TEN.

Q. Okay. Were you asked to define which drugs cause SJS and TEN? Let's exclude NSAIDs for a moment. Let's stay off NSAIDs, and we'll come back to that. Excluding NSAIDs for purposes of my question, were you asked to define which drugs cause SJS and TEN and which drugs don't?

A. No, I was not.

Q. Beyond what you see a list in the medical literature frequently, such as AEDs and sulfa-based antibiotics, and NSAIDs, and Allopurinol -- that's, obviously, not a class, but a single medication -- has Dr. Valuck ever done anything beyond that to make a determination in your own mind as to which drugs cause and which drugs don't cause SJS and TEN?

MR. THOMAS: Objection, form.

A. No.

Q. (BY MR. JENSEN) No, you have not?

A. No.

Q. Okay. No, you have not and no is a double negative. You have to state something affirmatively. No, you have not ever done that; is that correct?

A. No, I have not specifically done that.

Q. That could be a denial of no, you have not, right?

A. I understand.

Q. Is the materials you just handed to me before we began -- do you believe it to be a printout of all that was previously provided to the Mutual attorneys -- and I guess you understand provided to me -- on a CD or are there additional materials in here?

MR. THOMAS: Objection to form.

A. To my understanding, that's everything that was provided.

Q. (BY MR. JENSEN) Okay. And how did you physically get these materials to Mutual counsel and when did you do that?

MR. THOMAS: Objection to form, foundation.

A. Copies were provided to them over the course of the last several months by e-mail, on DVD. Some of those, I reviewed the literature and found them. Some of those were provided to me as far as literature that may be useful to me, and that list was built over the last several months and then provided to them as we went along.

Q. (BY MR. JENSEN) You'll get all these originals back -- are these copies for me that I can take or do you need all these originals back?

A. Those are the only printed copies that I have, so I'd prefer to get them back.

MR. JENSEN: Then we'll make sure the originals get back to you. Okay, Miss Court Reporter?

MR. THOMAS: Those aren't copies for you to take. Those are copies to be marked and go with the transcript?

MR. JENSEN: Correct.

(Deposition Exhibits 1 and 2 were marked.)

Q. (BY MR. JENSEN) Exhibit 1 is your report in this case, correct?

A. Yes, that's correct.

Q. Who created Exhibit B to your report, Exhibit 2?

A. Exhibit B, I created that.

Q. And other than the medical literature that's listed here, is there any other medical literature beyond this set forth in Exhibit B that you reviewed in relation to this case or this matter?

A. Not in any detail, no.

Q. Okay. In other words, you might have seen it, but you didn't really read it with interest? Fair?

A. Correct.

Q. Okay. And who created this tabbed set of this medical literature, this index of medical literature?

A. That tabbed set was created by the attorneys or staff at Ulmer Berne.

Q. And then presently, when did you get it from them?

A. I believe that was probably in September or early October of 2009.

MR. JENSEN: Okay. For the record, I'm going to mark this as Exhibit 3, and if the witness gets his original back, that means I'm going to get a tabbed copy of 1 through 24, including the index, which I'm putting the sticker on Exhibit 3. So we'll call it 3-1 through 3-24.

(Deposition Exhibit 3 was marked.)

Q. (BY MR. JENSEN) So 3-16 is a copy of one of the only two reports mentioned in your report, correct, relating to medical literature publications mentioned in your report, correct?

A. Yes.

Q. And we can call it the '08 Mockenhaupt, right?

A. That's correct.

Q. And the only other publication mentioned in your report is the '03 Mockenhaupt, right?

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