



Aug 8 2007
11:04AM

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AUG 07 2007

Carol E. Higbee, P.J.Cv.

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Attorneys for Plaintiff(s)

JOHN McDARBY and IRMA
MCDARBY, husband and wife,

Plaintiffs,

v.

MERCK & CO., INC.,

Defendant(s).

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION
: ATLANTIC COUNTY
:
: Docket No. L-1296-05
:
: CIVIL ACTION
:
: **ORDER DENYING DEFENDANT'S**
: **MOTION FOR NEW TRIAL, JUDGMENT**
: **NOTWITHSTANDING THE**
: **VERDICT AND REMITTITUR;**
: **GRANTING, IN PART, PLAINTIFFS'**
: **MOTION FOR FEES AND COSTS,**
: **AWARDING, IN PART, PREJUDGMENT**
: **INTEREST AND ENTERING JUDGMENT**
: **ON THE VERDICT**

THIS MATTER having been tried to a jury before the Hon. Carol E. Higbee, P.J.Cv., beginning on March 6, 2006 and continuing on such dates as are reflected in the transcript; and the jury having rendered its verdict for compensatory damages on April 5, 2006, awarding to plaintiffs John and Irma McDarby the amount of Four Million, Five Hundred Three Thousand, Nine Hundred Sixty Eight Dollars (\$4,503,968) in compensation for pain, suffering, disability, loss of enjoyment of life (\$3,000,000), loss of consortium (\$1,500,000) and ascertainable economic loss pursuant to the Consumer Fraud Act (\$3,968); and the jury having rendered its verdict for punitive damages on April 11, 2006, awarding to plaintiffs' John and Irma McDarby the amount of Nine Million Dollars (\$9,000,000); and defendant Merck & Co., Inc. having moved for a new trial, judgment notwithstanding the verdict(s) and remittitur and plaintiffs, John

and Irma McDarby having moved for attorneys' fees and costs pursuant to the Consumer Fraud Act (CFA);

IT IS on this 7th day of August, 2007,

ORDERED that defendant Merck & Co., Inc.'s motion for a new trial, for judgment notwithstanding the verdict(s) and remittitur in this matter be and hereby is DENIED, for the reasons stated in the Court's Memorandum of Decision dated June 8, 2007; and it is further

ORDERED that plaintiffs John and Irma McDarby's motion for attorneys fees and costs in this matter be and hereby is GRANTED, in part, for the reasons stated in the Court's Memorandum of Decision dated June 15, 2007; it is further

ORDERED that prejudgment interest is awarded on the initial amount awarded pursuant to the Consumer Fraud Act, but not on the trebled amount nor on the amount awarded as attorneys' fees and costs for the reasons stated in the Court's Memorandum of Decision dated August 2, 2007 and it is further

ORDERED that judgment be and hereby is entered in the Civil Docket in favor of plaintiffs and against defendant Merck & Co., Inc. in the amount of Fifteen Million Seven Hundred Fifty Four Thousand Six Hundred Seventy Seven Dollars (\$15,754,677), together with post-judgment interest accruing at an annual rate of 6.0 percent for each day during calendar year 2007 after August 13, 2007, or \$2,552 per day, and at the annual rate set pursuant to R. 4:42-11(a) for each calendar year, after 2007, that the judgment remains outstanding, as follows:

1. Four Million Five Hundred Eleven Thousand Nine Hundred Four Dollars (\$4,511,904) in accordance with the jury's verdict for compensatory damages (including treble damages for the \$3,968 ascertainable loss pursuant to the Consumer Fraud Act); and

2. Nine Million Dollars (\$9,000,000) in accordance with the jury's verdict for punitive damages; and
3. One Million Six Hundred Fifteen Thousand Five Hundred Forty Eight Dollars (\$1,615,548) ($\$2,019,435.25 \times 0.80$) awarded as attorneys' fees for the Consumer Fraud Act claim;
4. One Hundred Sixty Two Thousand Three Hundred Ninety Nine Dollars (\$162,399) ($\$340,483.71 - [\$55,650 \text{ (experts)} + 108,021.60 \text{ (prior lodging amount)}] + \$26,187 \text{ (29 days} \times 7 \text{ rooms} \times \$129) \times 0.80$) awarded as costs for the Consumer Fraud Act claim;
5. Four Hundred Sixty Four Thousand Eight Hundred Twenty Six Dollars (\$464,826) for pre-judgment interest pursuant to R. 4:42-11(b), calculated as follows:
 - a. On \$4,500,000 (compensatory damages):
 - 1) from February 16, 2005 through December 31, 2005 at an annual rate of 3.0 percent, totaling \$ 117,990 ($\$4,500,000 \times 0.03 \times 0.8740 [319/365]$);
 - 2) from January 1, 2006 through December 31, 2006 at an annual rate of 4.0 percent, totaling \$180,000 ($\$4,500,000 \times 0.04 \times 1.0000 [365/365]$);
 - 3) from January 1, 2007 through August 13, 2007 at an annual rate of 6.0 percent, totaling \$166,428 ($\$4,500,000 \times 0.06 \times 0.6164 [225/365]$)
 - b. On \$3,968 (ascertainable loss):

- 1) from February 16, 2005 through December 31, 2005 at an annual rate of 3.0 percent, totaling \$ 104 ($\$3,968 \times 0.03 \times 0.8740$ [319/365]) ;
 - 2) from January 1, 2006 through December 31, 2006 at an annual rate of 4.0 percent, totaling \$ 158 ($\$3,968 \times 0.04 \times 1.0000$ [365/365]) ;
 - 3) from January 1, 2007 through August 13, 2007 at an annual rate of 6.0 percent, totaling \$ 146 ($\$3,968 \times 0.06 \times 0.6164$ [225/365])
6. Post-judgment interest pursuant to R. 4:42-11(a), accruing at an annual rate of 6.0 percent for each day during calendar year 2007 after August 13, 2007, or \$2,552 per day, calculated as follows: $\$15,754,677 \times 0.06 \times 0.0027$ (1/365)
and
7. Post-judgment interest accruing at the annual rate set pursuant to R. 4:42-11(a) for each calendar year after 2007 that the judgment remains outstanding.

BY THE COURT:



CAROL E. HIGBEE, P.J.Cv .