

1997 TOP DEFENSE VERDICTS



The National Law Journal

April 4, 1998



MAJOR DEFENSE VERDICTS: PRODUCTS LIABILITY

CASE: *Howray v. Gulf Coast Regional Blood Center*, 94-049929-A (Dist. Ct., Harris Co., Texas)

Plaintiffs' attorney: *Michael D. Sydow, then of Houston's Sydow & McDonald L.L.P., now of Washington, D.C.'s Verner, Liipfert, Bernhard, McPherson and Hand Chartered*

DEFENSE ATTORNEYS : *Philip S. Beck and Adam L. Hoeflich, of Chicago's Bartlit Beck Herman Palenchar & Scott; Jonathan B. Shoebottom, of Houston's Woodard, Hall & Primm P.C.; Eugene A. Schoon, of Chicago's Sidley & Austin; Eric H. Sussman, then of Chicago's Sidley & Austin, now law clerk to Judge George M. Marovich (N.D., Ill.); Daniel W. Bishop II, of the Austin, Texas, office of Dallas' Locke Purnell Rain Harrell P.C.; Sylvia Matthews Egner, of Houston's Mayor, Day, Caldwell & Keeton L.L.P.*

Date of verdict: *April 3, 1997*

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Monday, April 6, 1998 IN THE 1970S, ALPHA Therapeutic Corp. and Armour Pharmaceutical Co., along with other major drug companies, began producing a miracle product for hemophiliacs, a concentrate made from human blood plasma, which enabled hemophiliacs to live nearly normal, and longer, lives. Unfortunately, the "wonder drug" led to a tragic result. The blood concentrates infected hemophiliacs who used the product with the human immunodeficiency virus. Alpha and Armour, along with the other companies, agreed in 1996 to join

in a global \$650 million settlement to HIV-positive hemophiliacs. Some of the infected hemophiliacs opted out of the settlement, preferring to take their chances with juries, rather than accept the \$100,000 payments offered in the settlement. The first of these cases came to trial against Bayer Corp. in Indianapolis in 1997 and resulted in a \$2 million verdict for the plaintiffs, parents of a hemophiliac who died at 14 of AIDS. For the drug companies, this verdict seemed to raise the specter of a series of massive plaintiffs' verdicts. But the second trial involving opt-out plaintiffs, against Alpha and Armour, ended in a much different result. The plaintiffs, Blaine Howray and Byron Brown, both hemophiliacs, were diagnosed HIV-positive in 1985. Their families sued Alpha and Armour, charging that blood concentrates made by these companies had infected the boys in late 1983 and that the companies were negligent in failing to limit the possibilities of HIV-infected blood contaminating the concentrates and failing to use a heat treatment on the concentrates to kill the virus. Both boys, then teenagers, were alive at the time of trial; Mr. Brown has since died. The defendants, while not disputing that the boys had been infected with HIV through the blood products, denied any negligence. The defendants contended, said Alpha attorney Adam L. Hoeflich, that "people did the best they could with the uncertain information of the time. We felt we should not be judged by hindsight." Added defense attorney Philip S. Beck: "Nine-tenths of those with HIV had already been infected by the time we understood the problem." The plaintiffs were seeking \$120 million in compensatories and more than \$200 million in punitives. But a Houston jury April 3, 1997, returned a complete defense verdict. The plaintiffs' post-trial motions to set aside the verdict were denied in July; the judgment has been appealed.