

\$19 Million Award Against Drug Firm

A boy's birth defect was linked to a morning sickness drug. A jury found reckless disregard

By Linda Loyd

Of the Inquirer Staff

FEBRUARY 2, 1987

A Philadelphia jury yesterday awarded \$19.2 million to a 13-year-old boy who was born with club feet after his mother took a morning sickness drug, Bendectin, during her pregnancy.

"We're a little overwhelmed," said Joan Blum, sobbing, and hugging her husband, Frederic, and the couple's son, Jeffrey. The Blums, of Huntingdon Valley, first sued the drug's manufacturer, Merrell Dow Pharmaceuticals Inc. in 1982. After 12 years - and two trials - they were savoring the victory.

After a seven-week trial before Judge Mark I. Bernstein in Common Pleas Court, the jury found that Merrell Dow had acted negligently and with reckless disregard to the consequences to unborn children, such as Jeffrey, whose mothers took the once commonly prescribed drug.

Jeffrey, who wept in the courtroom with his parents when the verdict was announced, has worn leg braces all his life and has had 11 operations to correct abnormalities in his feet and lower legs.

Now a seventh grader at Lower Moreland High School, Jeffrey was awarded \$4 million to compensate for his birth injury. The jury awarded \$200,000 to his parents for medical expenses, and assessed Merrell Dow an additional \$15 million in punitive damages.

Merrell Dow, a subsidiary of Dow Chemical, stopped making Bendectin in 1983, because of adverse publicity and the cost of defending lawsuits alleging it caused birth defects, the company said.

Thomas R. Kline, the Blums' attorney, said the judgment "is a major victory for women and for the safety of pharmaceutical products in the United States."

The award was the third largest in a Bendectin case.

It was the second jury verdict for the Blums. In 1987, when the case first went to trial, a Philadelphia Common Pleas Court jury awarded the Blums \$2 million in compensatory and punitive damages. That verdict was overturned on appeal and a new trial was ordered. Merrell Dow contended it was denied a fair trial when one juror became ill during the 1987 trial and was not replaced.

Merrell Dow said it would appeal yesterday's decision.

"We've just begun to fight," Cincinnati defense lawyer Frank C. Woodside 3d said when he was leaving the courtroom.

For 27 years, from 1956 to 1983, doctors routinely prescribed Bendectin for women who complained of nausea during pregnancy. An estimated 33 million women around the world took Bendectin, a mixture of a B vitamin and an antihistamine called doxylamine, before it was withdrawn from the market in 1983.

According to testimony during this trial, Jeffrey's mother took the drug every day of her pregnancy. At that time, the prescription labeling said the drug was safe, Kline said.

In testimony, Merrell Dow cited several epidemiologic studies. The Blums' attorney showed that some of those studies were financed with Merrell Dow funds, and actually showed that the drug caused birth defects. During the trial, Kline presented evidence that in the 1960s and 1970s Merrell Dow withheld lab findings from the Food and Drug Administration and kept two sets of records.

Kline showed that a 1963 Merrell test on rabbits turned up "many skeletal and limb deformities," but the true findings were not reported to the FDA, he said. Merrell reported only six malformations in 111 live rabbit fetuses. However, in 1980, when the FDA audited Merrell's books, it found the company had actually kept two separate laboratory notebooks.

"The original observations in the book showed that in that study, there were 21 malformations - including club feet - instead of just six," Kline said.

Yet, as late as 1980, the company told the FDA there were only six malformations in the rabbits tested in 1963.

Merrell's studies were "hopelessly flawed," Kline told the jury.

Merrell, one of the 20 largest pharmaceutical companies in the world, has fared well in defending itself in lawsuits regarding Bendectin. Thirty-eight cases have been tried thus far, and Merrell has won favorable judgments or verdicts in all but six, company spokesman Tom Heapes said yesterday.

Of the six jury verdicts against the company, all but one has been overturned on appeal - including the two largest verdicts, a \$95 million jury award in Washington, D.C., and a \$30 million jury verdict in Corpus Christi, Texas.

Only one other case - a \$750,000 jury award in a Washington, D.C., case - is still on appeal. The Blum verdict will make the second, Heapes said.

Bendectin was approved as an anti-nausea drug for pregnant women "within 30 days" of Merrell seeking FDA approval, said Kline.

One juror, speaking on the condition of anonymity, said: "The evidence proved the case that the company was negligent. They should have at least warned, in the labeling, that there was a possibility of birth defects. They knew for a long time - for years."