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Woman Had Heart Attack After Taking Ephedra

Metabolife Settled On Second Day Of Trial

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A 39-year-old woman who claimed a dietary supplement caused her to suffer cardiac arrest has settled her St. Louis County case against the manufacturer for a confidential amount.

Beverly Stumpe said the combination of ephedra and caffeine in Metabolife 356, which she had been taking for two weeks in order to lose weight, led to an April 1999 heart attack that resulted in mild brain damage.

According to Stumpe's attorney, Mary Coffey of St. Louis, the case is one of several around the country alleging dangerous health effects of ephedra products.

"The most high-profile case was filed recently by the widow of Steve Bechler, the Baltimore Orioles pitcher who died while taking ephedra," said Coffey, who was assisted by co-counsel Genevieve Nichols in the litigation. "While ephedra cases are just starting to go to trial, we are already seeing some plaintiffs' verdicts."

Thomas Mannion of Cleveland, Ohio, who represented Metabolife in Stumpe's case, denied that her heart attack was related to ephedra — or that Stumpe had even taken ephedra on the day of the attack. The company denied liability in agreeing to the settlement.

A settlement report on the case, *Stumpe v. Metabolife*, appears on Page 5.

Heart Attack

Stumpe was an airplane detailer living in O'Fallon, Mo., with her husband and two children. In early 1999 she bought a bottle of Metabolife 356 pills at a kiosk in the St. Charles Mid-Rivers Mall — the display caught her attention because friends at work had been talking about "burn fat while you sleep" products airing on the radio.

According to Coffey, Stumpe took a pill every morning with her coffee "for a couple of weeks." At the time, there were no warnings on Metabolife 356 labels.

On April 18 she had a heart attack, including a brief cardiac arrest, and was taken by ambulance to a local hospital. Later she was transferred to Washington University Medical Center. Her cardiologist concluded that the attack was the result of a sudden temporary restriction of the artery, and that there was no arterial blockage.

Stumpe incurred over $100,000 in medical bills for her treatment, which included the implantation of a defibrillator. Her doctors say she must take cardiac medication for the rest of her life, and she was diagnosed with mild organic brain damage. One neuropsychologist said her condition included troubles in processing information.

MARY COFFEY
Discovery was a 'tooth and nail' battle

Lawsuit

In her products liability lawsuit against Metabolife, Stumpe claimed that the combination of ephedra — a stimulant extracted from the Ma Huang plant that grows in Asia — and caffeine caused her heart to spasm and resulted in the heart attack. Her expert cardiologist testified that ephedra was the cause since no cardiac disease was diagnosed.

Metabolife denied any relationship between ephedra and the heart attack, which the company said was caused by Stumpe's smoking. It also denied that she even took a Metabolife 356 pill on the day of the heart attack, arguing that a subsequent toxicology screening found no ephedra in her system.

Coffey said that a key part of her case was showing that Metabolife had received numerous complaints of adverse health effects in the past about the product. She requested relevant documents early in the litigation but said the company refused to turn them over.

"We went in right away and asked for any adverse events," said Coffey. "But they fought it tooth and nail from the beginning."

She said Metabolife sought a protective order that would preclude Coffey from sharing the information with anyone outside the litigation. "I refused the protective order because I wanted to talk to other plaintiffs' lawyers about the information," she said. "Metabolife told me I was the only lawyer that ever refused to agree to their protective order."

Failing to get Coffey's agreement, Metabolife took up the issue in court. St. Louis County Circuit Judge Gary Gaertner Jr. ruled that Coffey had a right to the documents and also was entitled to share them with other attorneys. The company unsuccessfully sought a writ of prohibition from the Missouri Court of Appeals' Eastern District and from the Missouri Supreme Court.

"I got a huge stack of documents a few days before trial," Coffey said. "I also had to get a court order to have them produce higher-ups" to testify, she said.

She noted that in other litigation, the company's founder and co-owner, Michael Ellis, had taken the Fifth Amendment in connection with questions about adverse health affects. Ellis told the Food and Drug Administration in 1998 that Metabolife had received no complaints about serious side effects. But in August 2002, after it was revealed that the Department of Justice was investigating Ellis, the company released over 14,000 reports of complaints by consumers, which included heart attacks, strokes and seizures.

Metabolife contends that the adverse effects are not causally related to its products, saying that there are bound to be some coincidental health issues among the millions of people who use Metabolife 356.

GENEVIEVE NICHOLS
Co-Counsel for Plaintiff

According to Coffey, government regulation of ephedra-containing products is difficult because it is a dietary supplement rather than a food or drug. "Manufacturers can market it without any clinical studies," she said.

The case went to trial on June 16. Coffey said both sides made their opening statements to the jury, and then her expert cardiologist, Dr. William Schwarze, testified. "Dr. Schwarze said there was a cause and effect relationship between taking the Metabolife 356 and Beverly Stumpe's heart attack."

After Schwarze's testimony, the parties settled for a confidential amount.

In addition to other confidential settlements across the country, several ephedra cases have gone to a verdict, including the following:

Scurlock v. Twin Laboratories Inc. (February 2003)

An Austin, Texas jury on Feb. 21 awarded $1 million to the parents of Charles Bryant Scurlock II, a 24-year-old man who took Ripped Fuel, an energy booster that includes ephedra and caffeine, before running a two-mile Army physical fitness test. Scurlock collapsed and later died. The jury found the manufacturer 50 percent responsible for his death. Twin Labs has been the subject of other ephedra-related lawsuits, including one that was scheduled to go to trial this summer in Hawaii.

Hendricksen v. Metabolife (December 2002)

The only clear defense win so far came when a jury in Rancho Cucamonga, Calif., ruled, after four days of deliberation, that Metabolife 356 was defective but not the cause of plaintiff Tom Hendricksen's stroke. The suit alleged that the mixture of ephedrine and caffeine in the pill — so- called 'stacking' of stimulants — caused Hendricksen's stroke four years earlier. There was no proof that 51-year-old Hendricksen had ephedrine and caffeine in his system at the time and defense attorneys argued successfully that his was a "garden variety stroke."

McCain v. Metabolife (November 2002)

A federal jury in Birmingham, Ala., awarded $4.6 million, including $3.1 million in punitives, against Metabolife for selling a dangerous and defective dietary supplement, Metabolife 356, to four plaintiffs ranging in age from 46 to 67. Three of the four suffered strokes; the fourth, Wilmer Hudson, suffered a heart attack. This was the first case against a dietary supplement manufacturer to go to trial. At least three dozen others were settled between 1994 and 1999, according to The Washington Post.

Talbert v. E'Ola (February 2001)

Hailed as the first plaintiff's win against ephedra, a jury in Anchorage, Alaska awarded $1.3 million in compensatory damages and $12 million in punitives in a case involving a 34-year-old woman who drank a beverage containing ephedrine before exercising, and later suffered a stroke. Plaintiff's attorney Richard Vollertsen lost on causation issues before the initial jury, though the jury did find the manufacturer negligent. After extensive lab testing, Vollertsen discovered the manufacturer had spiked the supplement with ephedrine hydrochloride, a synthetic drug, which made the product illegal. Under the DHSEA, a "natural" product may not contain synthetic additives. By the time Vollertsen returned to court, two things had happened which helped his case: the New England Journal of Medicine had come out with the study showing that phenylpropanolamine (PPA), which is chemically identical to ephedrine, is dangerous and the FDA had released a study on the adverse events of ephedra. Still, since the case didn't involve pure ephedra, but contamination of it, it's considered somewhat marginal to the slew of ephedra claims currently being brought. "Spiking [of ephedra] is still going on in the industry, but it is not widespread," says Vollertsen. The verdict was later appealed and settled for a confidential sum.

(Summaries of the other litigation were provided by Diana Digges, Lawyers Weekly USA.)