

ORIGINAL

CAUSE NO. D-1-GV-08-001566

THE STATE OF TEXAS

IN THE DISTRICT COURT OF

Ex rel.

VEN-A-CARE OF THE
FLORIDA KEYS, INC.

Plaintiffs,

TRAVIS COUNTY, TEXAS

v.

ALPHARMA USPD now known as
ACTAVIS MID ATLANTIC LLC;
and
PUREPAC
PHARMACEUTICAL CO., now
known as ACTAVIS
ELIZABETH LLC

Defendants.

419TH JUDICIAL DISTRICT

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.

out to Deliberate

In with Verdict

Charge of the Court
Page 1 Filed in The District Court
of Travis County, Texas

Filed in The District Court
of Travis County, Texas

JAN 28 2011

FEB -1 2011

At 2:00 P.M.
Amalia Rodriguez-Mendoza, Clerk

At 10:55 A.M.
Amalia Rodriguez-Mendoza, Clerk

3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, you may answer a question upon the vote of ten or more jurors. If you answer more than one question upon the vote of ten or more jurors, the same group of at least ten of you must agree upon the answers to each of those questions.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight of credible evidence admitted in this case. A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence unless otherwise instructed.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is

established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

“Alpharma” means Alpharma USPD Inc. (f/k/a. Barre-National), and its successor Actavis Mid Atlantic, LLC.

“Purepac” means Purepac Pharmaceutical Co. (formerly a subsidiary of Faulding, Inc.), and its successor Actavis Elizabeth LLC.

“Actavis Defendants” means Alpharma (Actavis Mid Atlantic) and Purepac (Actavis Elizabeth).

“Person” includes corporation, organization, partnership, association, and any other legal entity.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party’s ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

QUESTION NO. 1

Question 1a:

Do you find that, during the period September 1, 1995 through August 31, 2005, the Actavis Defendants committed one or more unlawful acts under the Texas Medicaid Fraud Prevention Act?

For purposes of answering this question, "unlawful act" means:

Knowingly or intentionally making or causing to be made a false statement or misrepresentation of a material fact on an application for a contract, benefit, or payment under the Medicaid program.

Answer "Yes" or "No" for each.

Alpharma: YES

Purepac: YES

Question 1b:

Do you find that, during the period September 1, 1995 through August 31, 2005, the Actavis Defendants committed one or more unlawful acts under the Texas Medicaid Fraud Prevention Act?

For purposes of answering this question, "unlawful act" means:

Knowingly or intentionally concealing or failing to disclose an event:

(A) that the person knows affects the initial or continued right to a benefit or payment under the Medicaid program of

(i) the person, or

(ii) another person on whose behalf the person has applied for a benefit or payment or is receiving a benefit or payment; and

(B) to permit a person to receive a benefit or payment that is not authorized or that is greater than the payment or benefit that is authorized

Answer "Yes" or "No" for each.

Alpharma: YES

Purepac: YES

Question 1c:

Do you find that, during the period September 1, 1995 through August 31, 2005, the Actavis Defendants committed one or more unlawful acts under the Texas Medicaid Fraud Prevention Act?

For purposes of answering this question, "unlawful act" means:

Knowingly or intentionally making, causing to be made, inducing, or seeking to induce the making of a false statement or misrepresentation of material fact concerning information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program.

Answer "Yes" or "No" for each.

Alpharma: YES

Purepac: YES

If you answered "Yes" for any Actavis Defendant named in Question 1a, 1b, or 1c, then answer question 1d as to that Defendant or Defendants. Otherwise, do not answer Question 1d, and proceed to Question No. 2.

Question 1d:

What sum of money, if any, if paid now in cash, would restore to the State of Texas the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act or acts found in Question 1a, 1b, and 1c?

Answer in dollars and cents.

Alpharma: \$ 8,344,346.00

Purepac: \$ 9,251,829.00

If you answered "Yes" for any Actavis Defendant named in Question 1a, 1b, or 1c, then answer question 1e as to that Defendant or Defendants. Otherwise, do not answer Question 1e, and proceed to Question No. 2.

Question 1e:

How many unlawful acts as defined in Question 1a, 1b, and 1c, did the Actavis Defendants commit during the period September 1, 1995 through August 31, 2005?

Answer in a whole number for each.

Alpharma: 1867

Purepac: 1884

If you answered "Yes" for any Actavis Defendant named in Question 1a, 1b, or 1c, then answer Question 1f as to that Defendant or Defendants. Otherwise, do not answer Question 1f, and proceed to Question No. 3.

Question 1f:

What sum of money should be paid to the State of Texas as a civil penalty for each unlawful act you have found in response to Questions 1a, 1b, and 1c?

You are instructed that in determining the amount of the civil penalty a Defendant should pay per unlawful act, you shall consider:

- (1) whether that Defendant has previously violated the Texas Medicaid Fraud Prevention Act;
- (2) the seriousness of the unlawful act(s) committed by that Defendant, including the nature, circumstances, extent, and gravity of the unlawful act(s);
- (3) whether the health and safety of the public or an individual was threatened by the unlawful act(s);
- (4) whether that Defendant acted in bad faith when it engaged in the conduct that formed the basis of the unlawful act(s); and
- (5) the amount necessary to deter future unlawful acts.

Answer separately in dollars and cents with a number not less than \$1,000.00 and not more than \$10,000.00.

Alpharma: \$ 10,000.00

Purepac: \$ 10,000.00

QUESTION NO. 2

Question 2a:

Do you find that, during the period September 1, 2005 through May 3, 2007, the Actavis Defendants committed one or more unlawful acts under the Texas Medicaid Fraud Prevention Act?

For purposes of answering this question, "unlawful act" means the following:

Knowingly making or causing to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is greater than the benefit or payment that is authorized.

For purposes of answering this question, a person acts "knowingly" with respect to information if the person:

1. has knowledge of the information;
2. acts with conscious indifference to the truth or falsity of the information; or
3. acts in reckless disregard of the truth or falsity of the information.

For purposes of answering this question, proof of a person's specific intent to commit an unlawful act is not required to show that a person acted "knowingly" with respect to information.

Answer "Yes" or "No" for each.

Alpharma: YES

Purepac: YES

Question 2b:

Do you find that, during the period September 1, 2005 through May 3, 2007, the Actavis Defendants committed one or more unlawful acts under the Texas Medicaid Fraud Prevention Act?

For purposes of answering this question, "unlawful act" means the following:

Knowingly concealing or failing to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is greater than the benefit or payment that is authorized.

For purposes of answering this question, a person acts "knowingly" with respect to information if the person:

1. has knowledge of the information;
2. acts with conscious indifference to the truth or falsity of the information; or
3. acts in reckless disregard of the truth or falsity of the information.

For purposes of answering this question, proof of a person's specific intent to commit an unlawful act is not required to show that a person acted "knowingly" with respect to information.

Answer "Yes" or "No" for each.

Alpharma: YES

Purepac: YES

Question 2c:

Do you find that, during the period September 1, 2005 through May 3, 2007, the Actavis Defendants committed one or more unlawful acts under the Texas Medicaid Fraud Prevention Act?

For purposes of answering this question, "unlawful act" means the following:

Knowingly making, or causing to be made, inducing, or seeking to induce the making of a false statement or misrepresentation of material fact concerning information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program.

For purposes of answering this question, a person acts "knowingly" with respect to information if the person:

1. has knowledge of the information;
2. acts with conscious indifference to the truth or falsity of the information; or
3. acts in reckless disregard of the truth or falsity of the information.

For purposes of answering this question, proof of a person's specific intent to commit an unlawful act is not required to show that a person acted "knowingly" with respect to information.

Answer "Yes" or "No" for each.

Alpharma: YES

Purepac: YES

If you answered "Yes" for any Actavis Defendant named in Question 2a, 2b, or 2c, then answer question 2d as to that Defendant or Defendants. Otherwise, do not answer Question 2d, and proceed to Question No. 3.

Question 2d:

What sum of money, if any, if paid now in cash, would restore to the State of Texas the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act or acts found in Question 2a, 2b, and 2c, including any payment made to a third party?

Answer in dollars and cents.

Alpharma: \$ 2,958,445.00

Purepac: \$ 4,989,187.00

If you answered "Yes" for any Actavis Defendant named in Question 2a, 2b, or 2c, then answer question 2e as to that Defendant or Defendants. Otherwise, do not answer Question 2e, and proceed to Question No. 3.

Question 2e:

How many unlawful acts as defined in Question 2a, 2b, and 2c did the Actavis Defendants commit during the period September 1, 2005 through May 3, 2007?

Answer in a whole number for each.

Alpharma: 380

Purepac: 615

If you answered "Yes" for any Actavis Defendant named in Question 2a, 2b, or 2c, then answer Question 2f as to that Defendant or Defendants. Otherwise, do not answer Question 2f, and proceed to Question No. 3.

Question 2f:

What sum of money should be paid to the State of Texas as a civil penalty for each unlawful act you have found in response to Questions 2a, 2b, and 2c?

You are instructed that in determining the amount of the civil penalty a Defendant should pay per unlawful act, you shall consider:

- (1) whether that Defendant has previously violated the Texas Medicaid Fraud Prevention Act;
- (2) the seriousness of the unlawful act(s) committed by that Defendant, including the nature, circumstances, extent, and gravity of the unlawful act(s);
- (3) whether the health and safety of the public or an individual was threatened by the unlawful act(s);
- (4) whether that Defendant acted in bad faith when it engaged in the conduct that formed the basis of the unlawful act(s); and
- (5) the amount necessary to deter future unlawful acts.

Answer separately in dollars and cents with a number not less than \$1,000.00 and not more than \$10,000.00.

Alpharma: \$ 10,000.00

Purepac: \$ 10,000.00

QUESTION NO. 3

Question 3a:

Do you find that, during the period May 4, 2007 through February 28, 2010, the Actavis Defendants committed one or more unlawful acts under the Texas Medicaid Fraud Prevention Act?

For purposes of answering this question, "unlawful act" means the following:

Knowingly making or causing to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is greater than the benefit or payment that is authorized.

For purposes of answering this question, a person acts "knowingly" with respect to information if the person:

1. has knowledge of the information;
2. acts with conscious indifference to the truth or falsity of the information; or
3. acts in reckless disregard of the truth or falsity of the information.

For purposes of answering this question, proof of a person's specific intent to commit an unlawful act is not required to show that a person acted "knowingly" with respect to information.

Answer "Yes" or "No" for each.

Alpharma: YES

Purepac: YES

Question 3b:

Do you find that, during the period May 4, 2007 through February 28, 2010, the Actavis Defendants committed one or more unlawful acts under the Texas Medicaid Fraud Prevention Act?

For purposes of answering this question, "unlawful act" means the following:

Knowingly concealing or failing to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is greater than the benefit or payment that is authorized.

For purposes of answering this question, a person acts "knowingly" with respect to information if the person:

1. has knowledge of the information;
2. acts with conscious indifference to the truth or falsity of the information; or
3. acts in reckless disregard of the truth or falsity of the information.

For purposes of answering this question, proof of a person's specific intent to commit an unlawful act is not required to show that a person acted "knowingly" with respect to information.

Answer "Yes" or "No" for each.

Alpharma:

YES

Purepac:

YES

Question 3c:

Do you find that, during the period May 4, 2007 through February 28, 2010, the Actavis Defendants committed one or more unlawful acts under the Texas Medicaid Fraud Prevention Act?

For purposes of answering this question, "unlawful act" means the following:

Knowingly making, or causing to be made, inducing, or seeking to induce the making of a false statement or misrepresentation of material fact concerning information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program.

For purposes of answering this question, a person acts "knowingly" with respect to information if the person:

1. has knowledge of the information;
2. acts with conscious indifference to the truth or falsity of the information; or
3. acts in reckless disregard of the truth or falsity of the information.

For purposes of answering this question, proof of a person's specific intent to commit an unlawful act is not required to show that a person acted "knowingly" with respect to information.

Answer "Yes" or "No" for each.

Alpharma: YES

Purepac: YES

If you answered "Yes" for any Actavis Defendant named in Question 3a, 3b, or 3c then answer Question 3d as to that Defendant or Defendants. Otherwise, do not answer Question 3d, and proceed to Question No. 4.

Question 3d:

What sum of money, if any, if paid now in cash, would restore to the State of Texas the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act or acts found in Question 3a, 3b, and 3c, including any payment made to a third party.

Answer in dollars and cents.

Alpharma: \$4,851,048.00

Purepac: \$4,161,098.00

If you answered "Yes" for any Actavis Defendant named in Question 3a, 3b, or 3c, then answer Question 3e as to that Defendant or Defendants. Otherwise, do not answer Question 3e, and proceed to Question No. 4.

Question 3e:

How many unlawful acts as defined in Question 3a, 3b, and 3c did the Actavis Defendants commit during the period May 4, 2007 through February 28, 2010?

Answer in a whole number for each.

Alpharma: 509

Purepac: 930

If you answered "Yes" for any Actavis Defendant named in Question 3a, 3b, or 3c, then answer Question 3f as to that Defendant or Defendants. Otherwise, do not answer Question 3f, and proceed to Question No. 4.

Question 3f:

What sum of money should be paid to the State of Texas as a civil penalty for each unlawful act you have found in response to Question 3a, 3b, and 3c?

You are instructed that in determining the amount of the civil penalty a Defendant should pay per unlawful act, you shall consider:

- (1) whether that Defendant has previously violated the Texas Medicaid Fraud Prevention Act;
- (2) the seriousness of the unlawful act(s) committed by that Defendant, including the nature, circumstances, extent, and gravity of the unlawful act(s);
- (3) whether the health and safety of the public or an individual was threatened by the unlawful act(s);
- (4) whether that Defendant acted in bad faith when it engaged in the conduct that formed the basis of the unlawful act(s); and
- (5) the amount necessary to deter future unlawful acts.

Answer separately in dollars and cents with a number not less than \$5,000.00 and not more than \$10,000.00.

Alpharma: \$ 10,000.00

Purepac: \$ 10,000.00

If you answered "Yes" for any Actavis Defendant named in Questions 1a-c, 2a-c, OR 3a-c, then answer Question 4 as to that Defendant or Defendants. Otherwise, do not answer the following question.

QUESTION NO. 4:

What sum of money should be paid to the State of Texas for the attorneys' fees, witness fees, and deposition fees reasonably incurred by the State of Texas in prosecuting this action under the Texas Medicaid Fraud Prevention Act?

You are instructed that in determining the reasonableness of the State of Texas' attorneys' fees you shall consider:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;
- (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (7) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer separately in dollars and cents:

- | | | |
|----|--|-----------------|
| a. | For reasonable attorneys' fees, expenses, and costs incurred in the preparation and trial of this case. | \$ 4,463,559.60 |
| b. | For reasonable attorneys' fees in the event of an appeal to the Court of Appeals. | \$ 150,000.00 |
| c. | For reasonable attorneys' fees in the event a petition for review is filed but not granted by the Supreme Court of Texas. | \$ 50,000.00 |
| d. | For reasonable attorneys' fees in the event a petition for review to the Supreme Court of Texas is granted. | \$ 25,000.00 |
| e. | For reasonable attorneys' fees in the event a motion for rehearing is filed but not granted by the Supreme Court of Texas. | \$ 25,000.00 |
| f. | For reasonable attorneys' fees in the event a petition for writ of certiorari is filed but not granted by the United | |

States Supreme Court.

\$ 25,000.00

g. For reasonable attorneys' fees in the event a petition for writ of certiorari is granted by the United States Supreme Court.

\$ 50,000.00

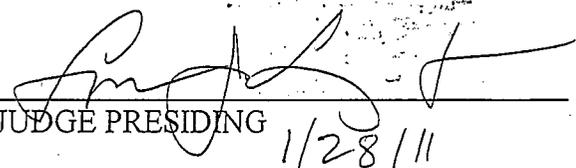
After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror—

1. to preside during your deliberations,
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge,
3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge,
4. to vote on the questions,
5. to write your answers to the questions in the spaces provided, and
6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.



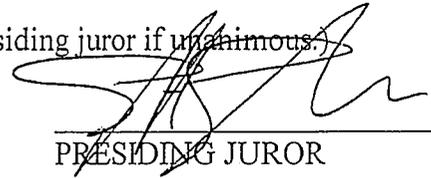
JUDGE PRESIDING

1/28/11

CERTIFICATE

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror if unanimous.)



PRESIDING JUROR

Printed Name: STEPHEN W. SIEGELE

(To be signed by those rendering the verdict if not unanimous.)

Printed Name: _____

Printed Name: _____