

# Damage lawsuits settled for millions

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An estimated 150 lawsuits involving pertussis vaccine are pending in courts throughout the United States. Altogether, the plaintiffs are asking about \$1.5 billion in damages from manufacturers.

Recently, Connaught Laboratories has said that "frivolous lawsuits" have contributed to rising costs of liability insurance. Higher liability costs were the reason Wyeth Laboratories gave when it left the market in June.

There are at least 6 law firms in the country handling these lawsuits: three firms handle DPT cases exclusively. Attorneys Allen McDowell in Chicago, Andrew Dodd in Los Angeles and Monty Preiser in Charleston, W.Va., have the bulk of the cases nationally.

"There are no frivolous lawsuits. These cases are really expensive," McDowell said. He estimated that the average case costs \$100,000 to \$175,000, and the attorney is paid a percentage of the award only if he wins the case. "If we lose, they owe us nothing. We pick up all the expenses."

Increasingly, the cases are being settled out of court. When that happens, the amounts usually are kept secret. However, informed sources say some cases have been settled for \$10 million and more.

Why are manufacturers settling?

"It's based on the evidence we've found, within the documents we obtained from various drug companies," McDowell said. "Believe me, the money you're talking about — they don't just pay that out as a nuisance. You have to have the evidence to be able to prove your case."

Other plaintiffs' attorneys think they don't want the adverse publicity a trial could generate. Two men who serve as expert witnesses for the manufacturers disagree.

Dr. James Cherry, UCLA researcher, professor of pediatrics and chief of the Division of Infectious Diseases at the UCLA Center for Health Sciences, said:

"The drug companies... are paying what to them is a small amount rather than bringing in a child who's going to have a convulsion in the courtroom.

"The jury's not going to listen to the evidence. It's going to settle for big money in favor of that child. That's sort of a simplification, but that's what happens.

"Also, some of the companies don't have an option about making a settlement—it's the insurance companies. There's a whole host of reasons why they settle, but it certainly isn't because they're guilty."

Dr. Edward Mortimer, American Academy of Pediatrics' adviser, Case Western Reserve University, Cleveland, said: "I've reviewed about 30 of these cases. Medically, all but two or three of them, beyond reasonable medical doubt, are unrelated to the vaccine,"

Mortimer said one recent case in Idaho cost the manufacturer \$1.7 million. "It's perfectly simple," he said. "The kid is pathetic; the manufacturer has a hell of a lot of money.

"The manufacturer goes in and tries to defend it and no matter what kind of expert testimony you get, the kid comes in and the jury cries and the judge cries and I cry and everybody cries. And they all feel terribly bad for the kid."

Dr. John Robbins, pertussis researcher: "There's no way for these companies to defend themselves." They settle out of court because "It's the cheapest way they can do it.

"In fact, one of them has stopped distribution (Wyeth) and it's likely the second will stop distributing (Connaught has removed DPT from its price list and has limited shipments). And it may be, we won't have any pertussis vaccine and that's a real threat.

"You might point out what the lawyers are doing and who's paying for it; the public is paying for it. In my opinion, what you have is an exploitation of a public health problem by unprincipled people."

"It's a terrible mistake and it's going to cost us," Cherry said. "It's going to cost the children because they are not going to get vaccinated. They're going to get whooping cough; Many are going to die.

"That's what's going to happen if the drug companies stop or if there's this continued opinion that the vaccine is bad."

In March, Dr. Kevin C Geraghty of the Bay Area Physicians for the Study of Pertussis Vaccines wrote to the American Trial Lawyers Association and the American Academy of Pediatrics about some doctors' possible conflict of interest.

For example, Cherry was the source for six years of whatever DPT information was being written for physicians (through his role on the academy's so-called Red Book committee). At the same time, he was testifying for drug companies in vaccine damage lawsuits.

Cherry said he makes no money as an expert witness (the fees go to UCLA) and he sees no conflict: "I will continue to testify for the drug companies because we don't want them to lose these suits, because children are going to suffer. It's a public duty.. . My main goal is to see that children are immunized.

"When you're dealing with a product that is approved by the FDA, recommended by the CDC and required by all states, it seems to me there's no conflict of interest."

Mortimer said he and others who serve on advisory committees are "concerned about, child health. We began to get worried for fear the manufacturers would be driven out of the business. And, indeed, they are being driven out of business.

"All right, we can learn the hard way and we can have a lot of deaths from whooping cough, which we don't see any more, but that's a hard way to learn a lesson."

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