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Litigators of the Week: A Defense Verdict in Cook County in the First Zantac Trial

By Ross Todd

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Our Litigators of the Week, **Tarek Ismail** of **Goldman Ismail Tomaselli Brennan & Baum** and **Andrew Bayman** of **King & Spalding**, led teams representing GlaxoSmithKline and Boehringer Ingelheim respectively in the first trial considering claims that the discontinued heartburn drug Zantac causes cancer. Last week, after three weeks of trial and four hours of deliberations, a jury in Cook County Circuit Court rejected an Illinois woman's claim that the drug caused her colon cancer.

The defense verdict comes more than two years after U.S. District Judge Robin Rosenberg in West Palm Beach, Florida, ruled that plaintiffs' experts in the federal Zantac multidistrict litigation employed "unreliable methodologies" and took "analytical leaps" from existing data, effectively dismissing 50,000 claims.

Lit Daily: Who were your clients and what was at stake for them in this trial?

Tarek Ismail: We represented GlaxoSmithKline (GSK) LLC.

Andy Bayman: Our client was Boehringer Ingelheim Pharmaceuticals Inc. This trial was significant because it was the first Zantac case to go to trial.

Courtesy photos

Tarek Ismail of Goldman Ismail Tomaselli Brennan & Baum, left, and Andrew Bayman of King & Spalding, right.

How did you and your firm get involved in this matter? And what has your role been in the broader Zantac litigation?

Ismail: After the judge presiding over a federal MDL in Florida found no reliable scientific evidence that Zantac causes cancer, GSK asked our firm to handle the first Zantac trial in Illinois state court

in 2022. We were days away from opening statements in that case when the plaintiff voluntarily dismissed his claims. Shortly after that, all Zantac claims in Illinois state court were consolidated in Cook County. Goldman Ismail has been managing that consolidated proceeding for GSK. We are slated to try at least four more Zantac cases in Cook County this year.

Bayman: King & Spalding was retained by Boehringer in late 2019 after the first Zantac cases were filed. Since then, K&S has represented Boehringer as national counsel, including in the federal multidistrict litigation in the Southern District of Florida and in consolidated proceedings in numerous states (including Illinois, California, Pennsylvania, and Delaware). With a deep bench of trial lawyers, we also serve as trial counsel for Boehringer.

Who was on your trial team and how did you divide the work?

Ismail: Rami Fakhouri and I served as GSK's trial lawyers. I handled opening and closing statements for GSK, cross-examined several of the plaintiff's expert witnesses, and conducted the direct examinations of GSK's former Head of Safety Dr. Stephen Hobbiger and GSK's toxicology expert witness. Rami cross-examined the plaintiff's testing witnesses and conducted a direct examination of GSK's expert witness on specific causation Dr. Ryan Merkow, a colon cancer expert from the University of Chicago. Goldman Ismail associate **Annie Wilt** supported Rami and me at trial and argued evidentiary objections. Goldman Ismail's **Elizabeth Villa** and **Sage Pope** supported the team with excellent paralegal work. **Will Sachse**, **Caroline Power** and **Rachel Leary** of **Dechert** and **Tom Sheehan** of **Shook, Hardy & Bacon** were vital in preparing our company and expert witnesses.

While each team member played a different role, we all worked together as colleagues, and each team member was integral to the team's success.

Bayman: **TaCara Harris** and I presented the case to the jury. I offered opening and closing statements, cross-examined the plaintiff's expert epidemiologist, and conducted the direct examination of Boehringer's gastroenterology expert witness. TaCara conducted the direct examination of the plaintiff, Angela Valadez, and cross-examined the plaintiff's lab-testing witnesses. K&S partners **Robert Friedman** and **Julia Zousmer** handled legal issues with the court before and during trial, while **Amanda Klingler** and **Eva Canaan** helped to prepare company and expert witnesses. Associates **Christopher Eby**, **Micha Nandaraj-Gallo**, **Luke Bosso** and **Diondra Hicks** provided crucial support before and during trial, along with paralegals **Christina Justus** and **Ercy Castro**. Of course, this entire team worked closely with the GSK team to present a unified defense to the jury.

This particular defendant had multiple colon cancer risk factors: She was 80 at the time of her diagnosis, she had a history of weight issues and smoking, and she had ignored her doctors' suggestion to get screened for colon cancer earlier. How did her case end up as the first to go to trial?

Bayman: The attorneys representing the majority of the Illinois plaintiffs selected Ms. Valadez's case to be the first to go to trial. Her counsel sought and received a preferential trial sitting pursuant to an Illinois statute that entitles plaintiffs who are elderly or in poor health to an early trial setting.

What were your key trial themes and how did you drive them home with the jury?

Bayman: The defense focused the jury on the scientific evidence, in the form of recent human epidemiological studies, that have consistently shown that Zantac is not associated with an increased

risk of any cancer type. Another theme was that the impurity alleged to be in Zantac, NDMA, is all around us—in water, foods, and air—and mere exposure to NDMA does not mean that a person is at an increased risk of cancer. In order to foreclose any possibility of punitive damages, the defense also highlighted how the finding of NDMA in some Zantac in 2019 came as a surprise to the world, and that neither defendant had any notice that it could form in Zantac.

Who handled the plaintiff's cross? What sorts of considerations did the team keep in mind when approaching the examination of a 90-year-old cancer survivor?

Bayman: TaCara Harris handled the cross for both defendants. Given Ms. Valadez's age and health, TaCara approached the examination with respect and kindness.

The jury did end up believing that she took a generic form of Zantac over an extended period, even though ranitidine (the active ingredient) only showed up once in her medical records. Were you able to get any useful testimony from her?

Bayman: The jury indicated that it believed that Ms. Valadez did take Zantac or its generic equivalent, but its finding in favor of the defendants demonstrates that the jury understood that mere exposure to trace amounts of NDMA does not lead to an increased risk of cancer.

What can defendants in future Zantac trials take from what you accomplished here—especially from how you dealt with the plaintiff's expert witnesses?

Bayman: That juries are capable of parsing complex scientific information when it is presented clearly and thoughtfully, and they are able to distinguish between the risks of NDMA exposure and the risks of Zantac exposure. The court's rejection of the plaintiff's request for punitive damages shows that there was no evidence that either defendant acted in a willful, wanton, or reckless manner when it came to Zantac.

What general lessons can other corporate defendants take from this win?

Ismail: Trial is an opportunity to tell the client's affirmative story. Corporate defendants sometimes spend significant time at trial trying to neutralize a plaintiff counsel's attempt to tell a "bad" company story instead of focusing on all the good. Trial is not just about showing why the other side is wrong; it's about showing why our side is right.

Bayman: Even in difficult jurisdictions, like Cook County, jurors are capable of understanding complex issues when evidence is carefully presented. This is true even with a product that is no longer on the market.

What will you remember most about this matter?

Ismail: We could not be prouder to have represented GSK in the first Zantac trial. Our client is a remarkable company, and the people we've worked with there are good scientists who care deeply about what they do. Trials are a great reminder of the supportive colleagues and clients we are privileged to work with

Bayman: That it was a privilege to stand up and represent the fine people of Boehringer, who work hard to improve lives around the world, in the first Zantac case to go to trial and in a very difficult jurisdiction for defendants.