

**ORIGINAL**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

***In Re* LORAZEPAM & CLORAZEPATE  
ANTITRUST LITIGATION**

**MDL Docket No. 1290  
Misc. No. 99mc0276**

**HEALTH CARE SERVICE CORP.,**

**This document applies to:**

**Plaintiff,**

**v.**

**Civ. No. 01-2646 (TFH)**

**MYLAN LABORATORIES, INC., et al.,**

**Defendants.**

**BLUE CROSS BLUE SHIELD OF  
MINNESOTA, BLUE CROSS BLUE  
SHIELD OF MASSACHUSETTS, and  
FEDERATED MUTUAL INSURANCE  
COMPANY,**

**Plaintiffs,**

**Civ. No. 02-1299 (TFH)**

**v.**

**MYLAN LABORATORIES, INC., et al.,**

**Defendants.**

**VERDICT FORM**

**I. PLAINTIFFS' ANTITRUST CLAIMS - LIABILITY**

**Lorazepam**

**Agreement In Unreasonable Restraint of Trade**

(a) Did Plaintiffs prove by a preponderance of the evidence that Defendants' agreements unreasonably restrained trade in the Lorazepam API or tablet market?

YES  NO

**Conspiracy in Unreasonable Restraint of Trade**

(b) Did Plaintiffs prove by a preponderance of the evidence that Defendants' conspired to unreasonably restrain trade in the Lorazepam API or tablet market?

YES  NO

**Monopolization**

(c) Did Plaintiffs prove by a preponderance of the evidence that Defendants:

(1) willfully acquired or maintained monopoly power in the Lorazepam API or tablet markets through restrictive or exclusionary conduct that substantially lessened competition?

YES  NO

**Attempted Monopolization**

(d) Did Plaintiffs prove by a preponderance of the evidence that Defendants:

(1) engaged in restrictive or exclusionary conduct that substantially lessened competition in the Lorazepam API or tablet markets;

(2) with the specific intent to monopolize those markets; and

(3) and that there was a dangerous probability that Defendants would achieve monopoly in the markets?

YES  NO

**II. PLAINTIFFS' ANTITRUST CLAIMS - DAMAGES**

(a) Did the Plaintiffs prove by a preponderance of the evidence that any Plaintiff suffered an antitrust injury caused by any violation of the antitrust laws that you determined Defendants' committed?

	<u>YES</u>	<u>NO</u>
BCBS of Minnesota	<u>X</u>	_____
BCBS of Massachusetts	<u>X</u>	_____
Federated Mutual Insurance Company	<u>X</u>	_____
Health Care Services Corporation	<u>X</u>	_____

If you answered Question II (a) no as to all Plaintiffs, then your verdict on the antitrust claims is for the Defendants. Please go to Section IV to consider the Plaintiffs' Unjust Enrichment claim.

If you answered yes to question II (a) as to any Plaintiff, go to question II (b).

(b) With respect to any Plaintiff you find proved by a preponderance of the evidence that it suffered an antitrust state the amount you find that Plaintiff was actually injured in its business or property. Include damages, if any, from each Plaintiff's reimbursements for Lorazepam tablets and Clorazepate tablets.

BCBS of Minnesota	\$ <del>8,430,887</del> 1,756,096 <sup>88</sup>
BCBS of Massachusetts	\$ <del>1,756,096</del> 8,430,887 <sup>88</sup>
Federated Mutual Insurance Company	\$ <u>410,878</u>
Health Care Services Corporation	\$ <u>1,448,437</u>

(c) Defendant(s) responsible for these damages are:

	YES	NO
Mylan	<u>X</u>	_____
Cambrex/Profarmaco	<u>X</u>	_____
Gyma	<u>X</u>	_____

**III. WILLFULNESS**

(a) Did Plaintiffs prove by a preponderance of the evidence that Defendant(s)' violation of the antitrust law(s) was (were) willful?

YES X NO \_\_\_\_\_

Clorazepate

Agreement In Unreasonable Restraint of Trade

(e) Did Plaintiffs prove by a preponderance of the evidence that Defendants' agreements unreasonably restrained trade in the Clorazepate API or tablet market?

YES  NO

Conspiracy in Unreasonable Restraint of Trade

(f) Did Plaintiffs prove by a preponderance of the evidence that Defendants' conspired to unreasonably restrain trade in the Clorazepate API or tablet market?

YES  NO

Monopolization

(g) Did Plaintiffs prove by a preponderance of the evidence that Defendants:

(1) willfully acquired or maintained monopoly power in the Clorazepate API or tablet markets through restrictive or exclusionary conduct that substantially lessened competition?

YES  NO

Attempted Monopolization

(h) Did Plaintiffs prove by a preponderance of the evidence that Defendants:

(1) engaged in restrictive or exclusionary conduct that substantially lessened competition in the Clorazepate API or tablet markets;

(2) with the specific intent to monopolize those markets; and

(3) and that there was a dangerous probability that Defendants would achieve monopoly in the markets?

YES  NO

If you answered yes to any of questions I (a) – I (h), then proceed to Section II to determine if Plaintiffs are due any damages. If you answered no to all questions I (a) – I (h), then your verdict on the antitrust claims is for the Defendants. Stop and have your foreperson date and sign this special verdict form.

**IV. UNJUST ENRICHMENT CLAIMS**

You should consider these questions only for a Plaintiff, if any, for which you found an antitrust violation, but were unable to find damages, other than nominal damages.

(a) Did the Plaintiffs prove by a preponderance of the evidence that any Plaintiff conferred a legally recognizable benefit on the Defendants; that Defendants had knowledge of the benefit; and that Defendants' accepted or retained the benefit under inequitable circumstances?

	<u>YES</u>	<u>NO</u>
BCBS of Minnesota	_____	_____
BCBS of Massachusetts	_____	_____
Federated Mutual Insurance Company	_____	_____
Health Care Services Corporation	_____	_____

If you answered Question IV (a) no as to all Plaintiffs, then your verdict on the unjust enrichment claim is for the Defendants. Stop and have your foreperson date and sign this special verdict form.

If you answered yes to question IV (a) as to any Plaintiff, go to question IV (b).

(b) With respect to any Plaintiff you find proved by a preponderance of the evidence that it conferred a legally recognizable benefit on the Defendants; that Defendants had knowledge of the benefit; and that Defendants' accepted or retained the benefit under inequitable circumstances, state the amount Defendants unjustly received from that Plaintiff?

BCBS of Minnesota	\$ _____
BCBS of Massachusetts	\$ _____
Federated Mutual Insurance Company	\$ _____
Health Care Services Corporation	\$ _____

*After the foreperson has signed and dated this special verdict form, please inform the Court that you have finished your deliberations and have a verdict.*

DATED this 1<sup>ST</sup> day of JUNE, 2005.

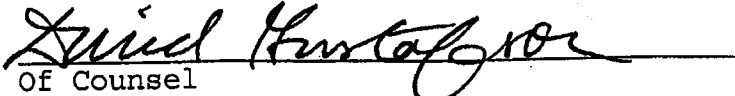


EVE BARSOUM

Foreperson

EILEEN J. O'CONNOR  
Assistant Attorney General  
MILDRED L. SEIDMAN  
Chief, Court of Federal Claims Section

Date: 6/2/2005

  
Of Counsel  
Attorneys for Defendant