

Sanctioned Supplier, Abbott Strike Deal Over TM Judgment

By Carolyn Muyskens

Law360 (November 6, 2024, 9:26 PM EST) -- Abbott Laboratories has resolved a dispute with a diabetes test-strip wholesaler that was ordered to pay Abbott \$33.4 million after committing discovery misconduct, with the parties saying they've agreed to a settlement after a federal appeals court upheld Abbott's default win in September.

Abbott and H&H Wholesale Services Inc. notified a New York judge Tuesday that they had settled trademark litigation that had resulted in a default judgment against Michigan-based H&H, its president Howard Goldman and his wife, Lori Goldman, also an H&H employee, as a sanction for discovery misconduct.

Abbott later claimed the Goldmans were attempting to dissipate their assets to evade the \$33.4 million judgment. A trust associated with Lori Goldman sued in Michigan court to block Abbott from tapping into the trust's assets to satisfy the judgment.

In letters to the judges in Michigan and New York, Abbott and the Goldmans said the settlement resolves their claims in both cases.

The settlement came as part of sprawling litigation Abbott initiated in 2015 against a number of distributors and pharmacies Abbott claimed were selling its FreeStyle brand of blood glucose test strips, a brand that was marketed to be sold in other countries. Abbott said the defendants' sale and distribution of the strips in the U.S. was trademark infringement.

H&H and the Goldmans were among the dozens of companies and individuals sued by Abbott. In 2019, a federal magistrate judge found H&H deserved the "harshest sanction" — a case-ending default judgment — for its discovery misconduct. The judge said H&H deliberately withheld documents and used vague search terms it knew wouldn't turn up results.

In March 2023, U.S. District Judge Carol Bagley Amon determined the Goldmans and H&H owed \$33.4 million to Abbott, an amount that reflected double the \$13 million losses from H&H's sales of the test strips plus \$1.5 million in attorney fees and costs and \$5.48 million in prejudgment interest to Abbott and its affiliates.

Abbott then accused the Goldmans of attempting to avoid paying the judgment and using trusts associated with the Goldmans to shield their assets.



Geoffrey Potter



Timothy Waters

In court filings in Michigan, the trustee of the Lori M. Goldman Irrevocable Trust claimed the domestic asset protection trust's assets are not available to Abbott to satisfy the judgment. The trustee said the trust was legitimate, not created to obstruct Abbott's collection of a judgment, and was established in 2018 to help Lori Goldman pass down assets to her children.

In July, Judge Amon, presiding over the New York case, agreed to freeze two of three trusts Abbott asked to freeze, the SGE I LLC trust and the Howard B. Goldman Irrevocable Trust, declining to freeze the Lori M. Goldman Irrevocable Trust because it was 98% invested in the SGE I LLC trust.

The judge found Abbott demonstrated the order was necessary because of Abbott's allegations that the Goldmans were tapping into the trusts and using the funds for personal expenses.

The Second Circuit then affirmed the \$33.4 million default judgment against H&H and the Goldmans in late September.

A portion of the settlement amount will be paid from the Goldmans' frozen accounts, the Nov. 5 letter stated.

If "all other terms of the settlement agreement are met," and after the full settlement amount is paid, the parties will ask the court to unfreeze the Goldmans' assets, the letter states.

Abbott said in April it had settled remaining claims against non-defaulted defendants, and a federal magistrate judge recommended in August that default judgments totaling \$54 million be entered against the 85 companies and individuals that never responded to Abbott's claims.

Counsel for the Goldmans declined to comment; a lawyer for Abbott did not immediately respond to a request for comment.

The Goldmans are represented by Leon B. Borstein of Ballou Stoll PC.

Abbott Laboratories is represented by Geoffrey Potter, Timothy A. Waters, Julia Long, Nicole Scully and Andrew Kirschenbaum of Patterson Belknap Webb & Tyler LLP in both cases and additionally by Frederick A. Berg and Mark T. Nelson of Butzel Long PC in the trust case.

The cases are Abbott Laboratories et al. v. Adelpia Supply USA et al., case number 1:15-cv-05826, in the U.S. District Court for the Eastern District of New York, and Zawideh v. Abbott Laboratories et al., case number 2:23-cv-12993, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Parker Quinlan, Dani Kass, Dorothy Atkins, Hailey Konnath and Andrew Karpan. Editing by Kelly Duncan.