

Abbott Laboratories Wins \$33.4 Million Judgment Against Wholesaler in Brooklyn Federal Suit

By Jane Wester

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U.S. District Judge Carol Bagley Amon of the Eastern District of New York on Friday entered a \$33.4 million judgment in favor of Abbott Laboratories in a long-running suit related to the illegal sale of the company's diabetes test strips.

The defendants, H&H Wholesale and its owner Howard Goldman, have filed notice of appeal.

Through its lead attorney, Patterson Belknap Webb & Tyler partner Geoffrey Potter, Abbott sued H&H, Goldman and other parties in 2015, arguing that they had "distributed and sold in the United States diverted international blood glucose test strips that are illegal to sell in the United States."

While litigation was ongoing, Abbott filed a related suit against H&H and reviewed the contents of an H&H server, revealing that "the H&H defendants had engaged in a calculated pattern of discovery misconduct in this action that amounted to a fraud upon the Court," Amon wrote in a December order dealing with Abbott's request for damages.

Abbott moved for case-ending sanctions, and Amon in 2020 granted the motion and entered a default judgment against H&H.

Amon adopted U.S. Magistrate Judge Lois Bloom of the Eastern District of New York's 2019 report and recommendation, in which Bloom described the events as "a cautionary tale about how not to conduct discovery in federal court."

"Standing alone, misrepresentations to the Court and the designed to fail search terms

would not warrant case ending sanctions; however, as enumerated below, this conduct is but one brush stroke in the composition of discovery abuses that has colored this litigation," Bloom wrote. "Moreover, plaintiffs would have never discovered the extent of defendants' withheld documents and defendants' fraud upon the court but for the seizure order entered in the subsequent counterfeiting case."

Amon in December denied H&H's request for an evidentiary hearing, noting that attorneys for both sides filed briefs discussing the appropriate amount of damages.

On Friday, Amon granted Abbott's proposed order for judgment, which included a doubling of Abbott's actual damages to \$26 million and \$1.5 million in attorneys' fees and costs, along with \$5.4 million in prejudgment interest.

Peter M. Levine, who represents Goldman and H&H Wholesale, said his clients intend to pursue their appeal.

"This case presents a very significant question about harsh punishment imposed without the benefit of an evidentiary hearing," Levine said.



Geoffrey Potter