

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

John F. Albano and Marianne Albano,	:	COMPLAINT AND DEMAND
		FOR JURY TRIAL
Plaintiffs,	:	
	:	
v.	:	Case No.
	:	
AbbVie Inc., and	:	
Abbott Laboratories, Inc.,	:	
	:	
Defendants.	:	
	:	

COMPLAINT

Plaintiffs John F. Albano and Marianne Albano, by and through the undersigned counsel, through this Complaint hereby alleges against AbbVie Inc. and Abbott Laboratories, Inc. the following:

INTRODUCTION

1. This case involves the prescription drug AndroGel, which is manufactured, sold, distributed and promoted by Defendants as a testosterone replacement therapy.

2. Defendants misrepresented that AndroGel is a safe and effective treatment for hypogonadism or “low testosterone,” when in fact the drug causes serious medical problems, including life threatening cardiac events, strokes, and thrombolytic events.

3. Defendants engaged in aggressive, award-winning direct-to-consumer and physician marketing and advertising campaigns for AndroGel. Further,

Defendants engaged in an aggressive unbranded “disease awareness” campaign to alert men that they might be suffering from “low T.”

4. According to the industry-leading Androgen Deficiency in Adult Males (“ADAM”) or “Is it Low T?” quiz, the symptoms of “Low T” include being “sad or grumpy”, “experiencing deterioration in the ability to play sports” and “falling asleep after dinner.” Available at: <http://www.isitlowt.com/do-you-have-low-t/low-t-quiz>. Most doctors agree that these symptoms can be caused by an abundance of factors, the most prominent of which is the natural aging process.

5. As a result of this “disease mongering,” as termed by Dr. Adriene Fugh-Berman of Georgetown University Medical Center, individuals diagnosed with Low T has increased exponentially. This has directly related to AndroGel’s sales increasing to over \$1.37 billion per year.

6. However, consumers of AndroGel were misled as to the drug’s safety and efficacy, and as a result have suffered injuries including life-threatening cardiac events, strokes, and thrombolytic events.

PARTIES

7. Plaintiffs John F. Albano and Marianne Albano, (“Plaintiffs”) are residents of Brewster, Massachusetts.

8. Defendant AbbVie, Inc. is a corporation organized and existing under the laws of Delaware with its principal place of business at 1 North Waukegan Road, North Chicago, Illinois 60064.

9. Defendant Abbott Laboratories, Inc. is a corporation organized and existing under the laws of the state of Illinois and maintains its principal place of business at 100 Abbott Park Road, Abbott Park, Illinois 60064.

10. Defendants AbbVie, Inc., and Abbott Laboratories, Inc. shall be referred to herein individually by name or jointly as “Defendants”.

11. By way of background, Unimed Pharmaceuticals Inc. originally developed AndroGel and sought FDA approval in 1999. Before the drug was approved by the FDA in 2000, Solvay Pharmaceuticals Inc. acquired Unimed Pharmaceuticals, Inc. and subsequently brought AndroGel to market. In 2010, Defendant Abbott Laboratories, Inc. acquired Solvay’s pharmaceutical division, which included AndroGel. Then, in 2013, Abbott created AbbVie, a company composed of Abbott’s former proprietary pharmaceutical business, which included AndroGel.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, because the amount in controversy as to the Plaintiffs exceeds \$150,000.00, exclusive of interest and costs, and because complete diversity exists between the parties, as Plaintiffs are citizens of Brewster, Massachusetts, which is different from the states where Defendants are incorporated and have their principal places of business.

13. This Court has supplemental jurisdiction over the remaining common law and state claims pursuant to 28 U.S.C. § 1367.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendants are subject to personal jurisdiction in accordance with 28 U.S.C. § 1391(c) and because a substantial part of the events giving rise to Plaintiffs' claims occurred in this jurisdiction.

GENERAL ALLEGATIONS

15. This action is for damages brought on behalf of Plaintiff John Albano ("Plaintiff") who was prescribed and supplied with, received and who has used and applied the prescription drug AndroGel, as tested, studied, researched, evaluated, endorsed, designed, formulated, compounded, manufactured, produced, processed, assembled, inspected, distributed, marketed, labeled, promoted, packaged, advertised for sale, prescribed, sold or otherwise placed in the stream of interstate commerce by Defendants. This action seeks, among other relief, general and special damages and equitable relief in order to enable Plaintiff to treat and monitor the dangerous, severe and life-threatening side effects caused by this drug.

16. Defendants' wrongful acts, omissions, and fraudulent misrepresentations caused Plaintiff's injuries and damages.

17. At all times herein mentioned, the Defendants were engaged in the business of, or were successors in interest to, entities engaged in the business of research, licensing, designing, formulating, compounding, testing, manufacturing, producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting, packaging and/or advertising for sale or selling the prescription drug AndroGel for the use and application by Plaintiff.

18. At all times herein mentioned, Defendants were authorized to do business within the state of Massachusetts, where Plaintiffs reside.

19. At all times herein mentioned, the officers and directors of Defendants participated in, authorized, and directed the production and promotion of the aforementioned product when they knew, or with the exercise of reasonable care should have known, of the hazards and dangerous propensities of said product, and thereby actively participated in the tortious conduct which resulted in the injuries suffered by Plaintiffs.

20. Plaintiffs file this lawsuit within the applicable limitations period of first suspecting Defendants' medication caused the appreciable harm sustained by Plaintiffs. Plaintiffs could not, by the exercise of reasonable diligence, have discovered the wrongful cause of Plaintiffs' injuries at an earlier time because the injuries were caused without perceptible trauma or harm, and when Plaintiffs' injuries were discovered, their cause was unknown to Plaintiffs. Plaintiffs did not suspect, nor did Plaintiffs have reason to suspect, that Plaintiff had been injured, the cause of the injuries, or the tortious nature of the conduct causing the injuries, until less than the applicable limitations period prior to the filing of this action.

21. Additionally, Plaintiffs were prevented from discovering this information sooner because Defendants misrepresented and continue to misrepresent to the public, and the medical community, that the drug AndroGel is safe and free from serious side effects, and Defendants have fraudulently concealed

facts and information that could have led Plaintiffs to discover a potential cause of action.

OVERVIEW

22. Hypogonadism is a specific condition of the sex glands, which in men may involve the diminished production or nonproduction of testosterone.

23. In 1999, when Unimed Pharmaceuticals Inc., one of the Defendants' predecessor companies, asked for FDA approval of AndroGel, it asserted that hypogonadism was estimated to affect approximately "one million American men."

24. In 2000, when the FDA approved AndroGel, the company announced that the market was "four to five million American men." By 2003, the number increased to "up to 20 million men." However, a study published in the Journal of the American Medical Association ("JAMA") in August 2013 entitled "Trends in Androgen Prescribing in the United States, 2001-2011" indicated that many men who get testosterone prescriptions have no evidence of hypogonadism. For example, one third of men prescribed testosterone had a diagnosis of fatigue, and one quarter of men did not even have their testosterone levels tested before they received a testosterone prescription.

25. Defendants coordinated a massive advertising campaign designed to convince men that they suffer from low testosterone. Defendants orchestrated a national disease awareness media blitz that purported to educate male consumers about the signs of low testosterone. The marketing campaign consisted of television advertisements, promotional literature placed in healthcare providers' offices and

distributed to potential AndroGel users, and online media including the unbranded website “IsItLowT.com.”

26. The television advertisements suggest that various symptoms often associated with other conditions may be caused by low testosterone and encourage men to discuss testosterone replacement therapy with their doctors if they experienced any of these “symptoms.” These “symptoms” include listlessness, increased body fat, and moodiness—all general symptoms that are often a result of aging, weight gain, or lifestyle, rather than low testosterone.

27. Defendants’ national education campaign included the creation and continued operation of the website www.IsItLowT.com. The website asserts that millions of otherwise healthy men experience low testosterone and encourages male visitors to “Take the ‘Is It Low T’ Quiz.” The ‘Is It Low T’ quiz asks men if they have experienced potential signs of low testosterone, including “Have you experienced a recent deterioration in your ability to play sports?”; “Are you falling asleep after dinner?”; “Are you sad and/or grumpy?”; and “Do you have a lack of energy?”

28. Dr. John Morley, director of endocrinology and geriatrics at the St. Louis University School of Medicine, developed this quiz at the behest of Dutch pharmaceutical company Organon BioSciences, in exchange for a \$40,000 grant to his university. The pharmaceutical company instructed Dr. Morley, “Don’t make it too long and make it somewhat sexy.” Dr. Morley drafted the questionnaire in 20 minutes in the bathroom, scribbling the questions on toilet paper and giving them

to his secretary the next day to type. Dr. Morley admits that he has “no trouble calling it a crappy questionnaire” and that it is “not ideal.” This is the ‘Low T Quiz’ used on the “IsItLowT” website. Natasha Singer, *Selling that New-Man Feeling*, Nov. 23, 2013, N.Y. Times.

29. Since the FDA approved AndroGel, Defendants have also sought to convince primary care physicians that low testosterone levels are widely under-diagnosed, and that conditions associated with normal aging could be caused by low testosterone levels.

30. While running its disease awareness campaign, Defendants promote their product AndroGel as an easy to use, topical testosterone replacement therapy. Defendants contrast their product’s at-home topical application with less convenient prescription testosterone injections, which require frequent doctor visits.

31. Defendants convinced millions of men to discuss testosterone replacement therapy with their doctors, and consumers and their physicians relied on Defendants’ promises of safety and ease. Although prescription testosterone replacement therapy has been available for years, millions of men who had never been prescribed testosterone flocked to their doctors and pharmacies.

32. What consumers received, however, were not safe drugs, but a product which causes life-threatening problems, including strokes, heart attacks and the development of deep vein thrombosis and pulmonary embolism.

33. Defendants successfully created a robust and previously nonexistent market for their drug. In 2012, Defendant Abbott Laboratories spent \$80 million

promoting AndroGel. The company also spent millions on its unbranded marketing including commercials and its websites, www.IsItLowT.com and www.DriveForFive.com, sites which recommend that men have regular checkups with their physicians and five regular tests performed: including cholesterol, blood pressure, blood sugar, prostate-specific antigen, and testosterone.

34. Defendants' advertising resulted in \$1.4 billion in sales during the past year, making AndroGel the biggest selling Androgen drug in the United States. Sales of replacement therapies have more than doubled since 2006, and are expected to triple to \$5 billion by 2017, according to forecasts by Global Industry Analysts. Shannon Pettypiece, *Are Testosterone Drugs the Next Viagra?*, May 10, 2012, Bloomberg Businessweek, *available at* <http://www.businessweek.com/articles/2012-05-10/are-testosterone-drugs-the-next-viagra>.

35. In early 2013, Medical Marketing & Media named two AbbVie executives as "the all-star large pharma marketing team of the year" for promotions of AndroGel and unbranded efforts to advance low T. *See* Singer, *Selling That New Man Feeling*, *supra*; *See also*, Larry Dobrow, *All-star large pharma marketing team of the year: Androgel*. Jan. 2, 2013, Medical Marketing & Media, *available at* <http://www.mmm-online.com/all-star-large-pharma-marketing-team-of-the-year-androgel/article/273242/>.

36. The marketing program sought to create the image and belief by consumers and physicians that low testosterone affected a large number of men in

the United States and that the use of AndroGel is safe for human use, even though Defendants knew these statements to be false, and even though Defendants had no reasonable grounds to believe them to be true.

37. There have been a number of studies suggesting that testosterone use in men increases the risk of heart attacks and strokes.

38. In 2010, a New England Journal of Medicine Study entitled “Adverse Events Associated with Testosterone Administration” was discontinued after an exceedingly high number of men in the testosterone group suffered adverse events.

39. In November of 2013, a JAMA study was released entitled “Association of Testosterone Therapy with Mortality, Myocardial Infarction, and Stroke in Men with Low Testosterone Levels” which indicated that testosterone therapy raised the risk of death, heart attack and stroke by about 30%.

40. On January 29, 2014, a study was released in PLOS ONE entitled “Increased Risk of Non-Fatal Myocardial Infarction Following Testosterone Therapy Prescription in Men” which indicated that testosterone use doubled the risk of heart attacks in men over sixty-five years old and men younger than sixty-five with a previous diagnosis of heart disease.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

41. The Food and Drug Administration approved AndroGel 1% on February 28, 2000 for the treatment of adult males who have low or no testosterone (AndroGel 1.62% was approved in April, 2011). After FDA approval, AndroGel was

widely advertised and marketed by Defendants as a safe and effective means of testosterone replacement therapy.

42. AndroGel is a hydroalcoholic gel containing testosterone in either 1% or 1.62%, is applied to the chest, arms or stomach and enters the body through transdermal absorption. The AndroGel 1.62% product also contains isopropyl myristate as an ointment and ethanol for absorption enhancement.

43. Testosterone is a primary androgenic hormone responsible for normal growth, development of the male sex organs, and maintenance of secondary sex characteristics.

44. The hormone plays a role in sperm production, fat distribution, maintenance of muscle strength and mass, and sex drive.

45. In men, testosterone levels normally begin a gradual decline after the age of thirty.

46. The average testosterone levels for most men range from 300 to 1,000 nanograms per deciliter of blood. However, testosterone levels can fluctuate greatly depending on many factors, including sleep, time of day, and medication. Resultantly, many men who fall into the hypogonadal range one day will have normal testosterone levels the next.

47. AndroGel may produce undesirable side effects to patients who use the drug, including but not limited to, myocardial infarction, stroke, deep vein thrombosis, pulmonary embolism and death.

48. In some patient populations, AndroGel use may increase the incidence of myocardial infarctions and death by over 500%.

49. In addition to the above, AndroGel has been linked to several severe and life changing medical disorders in both users and those who come into physical contact with users or the unwashed clothes of someone who applied AndroGel. Patients using AndroGel may experience enlarged prostates and increased serum prostate-specific antigen levels.

50. Secondary exposure to AndroGel can cause side effects in others. In 2009 the FDA issued a black box warning for AndroGel prescriptions, advising patients of reported virilization in children who were secondarily exposed to the gel. Testosterone may also cause physical changes in women exposed to the drug and cause fetal damage in pregnant women who come into secondary contact with AndroGel.

51. Defendants' marketing strategy beginning in 2000 has been to aggressively market and sell their products by misleading potential users about the prevalence and symptoms of low testosterone and by failing to protect users from serious dangers that Defendants knew, or should have known, would result from use of its products.

52. Defendants successfully marketed AndroGel by undertaking a "disease awareness" marketing campaign. This campaign sought to create a consumer perception that low testosterone is prevalent amount U.S. men and that symptoms

previously associated with other physical and mental conditions, such as aging, stress, depression, and lethargy were actually attributable to “Low-T.”

53. Defendants’ advertising program sought to create the image and belief by consumers and their physicians that the use of AndroGel was a safe method of alleviating their symptoms, had few side effects and would not interfere with their daily lives, even though Defendants knew or should have known these to be false. The Defendants had no reasonable grounds to believe them to be true.

54. Defendants purposefully downplayed, understated and outright ignored the health hazards and risks associated with using AndroGel. Defendants deceived potential AndroGel users by relaying positive information through the press, including testimonials from retired professional athletes, and manipulating hypogonadism statistics to suggest widespread disease prevalence, while downplaying known adverse and serious health effects.

55. Defendants concealed material relevant information from potential AndroGel users and minimized user and prescriber concern regarding the safety of AndroGel.

56. In particular, in the warnings Defendants give in their commercials, online and print advertisements, Defendants fail to mention any potential cardiac or stroke side effects and falsely represents that Defendants adequately tested AndroGel for all likely side effects.

57. As a result of Defendants’ advertising and marketing, and representations about its product, men in the United States pervasively seek out

prescriptions for AndroGel. If Plaintiff had known the risks and dangers associated with AndroGel, Plaintiff would not have used AndroGel and consequently would not have been subject to its serious side effects.

SPECIFIC FACTUAL ALLEGATIONS

58. Plaintiff was approximately 55 years of age when he was prescribed and starting using AndroGel for symptoms he attributed to low testosterone.

59. On or about July 18, 2005, Plaintiff saw his healthcare provider, Suzanne Hangasky, CANP. On or about that date, Ms. Hangasky diagnosed Plaintiff with hypogonadism and she prescribed AndroGel to treat this condition. Because Defendants did not disclose the true risks of the development of a heart attack, stroke, pulmonary embolism, deep vein thrombosis and/or death to Ms. Hangasky, it was impossible for Ms. Hangasky to adequately discuss the true risks and benefits of AndroGel with Plaintiff. Consequently, it was impossible for Plaintiff to learn of the true risks associated with the use of AndroGel.

60. Plaintiff, after a consultation with Ms. Hangasky, began using AndroGel on or about June 18, 2005. The AndroGel used by Plaintiff remained in substantially the same condition between when it left Defendants' control and when it was prescribed to Plaintiff. Ms. Hangasky would not have prescribed AndroGel to Plaintiff if Ms. Hangasky knew of the true risks associated with the use of AndroGel. In other words, Ms. Hangasky would not have prescribed AndroGel to Plaintiff if Ms. Hangasky knew the true risk of the development of a heart attack, stroke, pulmonary embolism, deep vein thrombosis and/or death.

61. Plaintiff would not have elected to use AndroGel if he knew of the true risks associated with the use of AndroGel. In other words, Plaintiff would not have used AndroGel if he knew the true risk of the development of a heart attack, stroke, pulmonary embolism, deep vein thrombosis and/or death.

62. Through no fault of his own, and no fault of his healthcare providers, on July 22, 2006, Plaintiff suffered a pulmonary embolism. The pulmonary embolism caused pain and suffering, financial loss and caused permanent injury to Plaintiff.

63. The AndroGel Plaintiff used caused physical and emotional impairment, which affected Plaintiffs' personal and professional lives.

64. Prior to using AndroGel, Plaintiff had not suffered a pulmonary embolism.

CAUSES OF ACTION

COUNT I NEGLIGENCE

65. Plaintiffs incorporate each paragraph of this Complaint as if set forth fully here, and further allege as follows.

66. Defendants had a duty to exercise reasonable and ordinary care in the design, manufacture, sale, testing, quality assurance, quality control, labeling, marketing, promotions, and distribution of AndroGel into the stream of commerce, including a duty to assure that its product did not pose an undue risk of bodily harm and adverse events, and to properly warn of all risks, and comply with federal requirements.

67. Defendants failed to exercise reasonable and ordinary care in the design, manufacture, sale, testing, quality assurance, quality control, labeling, marketing, promotion and distribution of AndroGel into the stream of commerce in that Defendants knew or should have known that the product caused significant bodily harm and was not safe for use by consumers. Specifically, Defendants failed to properly and thoroughly:

- a. Test AndroGel before releasing it into the market;
- b. Analyze the data resulting from the pre-marketing tests of AndroGel;
- c. Conduct sufficient post-market testing and surveillance of AndroGel; and
- d. Provide appropriate warnings for consumers and healthcare providers including disclosure of the known or potential risks or true or suspected rates of heart attack, stroke, deep vein thrombosis, pulmonary embolism and/or death.

68. Despite the fact that Defendants knew or should have known that their product posed a serious risk of bodily harm to consumers, Defendants continued to manufacture and market AndroGel for use by consumers and continued to fail to comply with federal requirements.

69. Defendants knew or should have known that consumers such as Plaintiff would foreseeably suffer injury as a result of Defendants' failure to

exercise ordinary care as described above, including the failure to comply with federal requirements.

70. It was foreseeable that Defendants' product, as designed, would cause serious injury to consumers, including Plaintiff.

71. As a direct and proximate result of Defendants' negligence, Plaintiff suffered serious physical injury, harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

72. Defendants' conduct as described above, including but not limited to their failure to adequately design, test, and manufacture, as well as their continued marketing and distribution of AndroGel when they knew or should have known of the serious health risks it created and the failure to comply with federal requirements, evidences a flagrant disregard of human life so as to warrant the imposition of punitive damages.

73. Defendants' actions and omissions as alleged in this Complaint demonstrate a flagrant disregard for human life, and willful and wonton conduct, which warrants the imposition of punitive damages.

WHEREFORE, Plaintiffs respectfully request an award of compensatory damages, in addition to all costs, interest and fees, including attorneys' fees, to which they are entitled under law and such other relief as this Honorable Court deems appropriate.

COUNT II
BREACH OF EXPRESS WARRANTY

74. Plaintiffs incorporate each paragraph of this Complaint as if set forth fully here, and further allege as follows.

75. Defendants expressly warranted that AndroGel was a safe and effective product for the treatment of low testosterone, and did not disclose the material risks that AndroGel could cause heart attacks, strokes, deep vein thrombosis, pulmonary embolism and/or death. The representations were not justified by the performance of AndroGel.

76. Members of the consuming public, including consumers such as Plaintiff, and his healthcare providers, were intended third party beneficiaries of the warranty.

77. Plaintiff and his healthcare providers reasonably relied on these express representations.

78. The AndroGel manufactured and sold by Defendants did not conform to these express representations because it caused serious injury to the Plaintiff when used as recommended and directed, and these risks were not disclosed to Plaintiff or his healthcare providers.

79. As a direct and proximate result of Defendants' breach of warranty, Plaintiffs suffered serious physical injury, harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

WHEREFORE, Plaintiffs respectfully request an award of compensatory damages, in addition to all costs, interest and fees, including attorneys' fees, to

which they are entitled under law and such other relief as this Honorable Court deems appropriate.

COUNT III
BREACH OF IMPLIED WARRANTY

80. Plaintiffs incorporate each paragraph of this Complaint as if set forth fully here, and further allege as follows.

81. When Defendants designed, manufactured, marketed, sold, and distributed their AndroGel for use by the Plaintiff, Defendants knew of the use for which it was intended and impliedly warranted the product to be of merchantable quality and safe for such use and that its design, manufacture, labeling, and marketing complied with all applicable federal requirements.

82. Plaintiff and his physicians reasonably relied upon the Defendants' representations of the product's merchantable quality and that it was safe for its intended use, and upon Defendants' implied warranty, including that it was in compliance with all federal requirements.

83. Contrary to such implied warranty, AndroGel was not of merchantable quality or safe for its intended use, because the product was defective, as described herein, and it failed to comply with federal requirements.

84. As a direct and proximate result of Defendants' breach of warranty, the Plaintiffs suffered serious physical injury, harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

WHEREFORE, Plaintiffs respectfully request an award of compensatory damages, in addition to all costs, interest and fees, including attorneys' fees, to

which they are entitled under law and such other relief as this Honorable Court deems appropriate.

COUNT IV
FRAUD

85. Plaintiffs incorporate by reference here each of the allegations set forth in this Complaint as though set forth fully herein.

86. Defendants, from the time they first tested, studied, researched, evaluated, endorsed, manufactured, marketed and distributed AndroGel, and up to the present, willfully deceived Plaintiff by concealing from him, his physicians and the general public, the true facts concerning AndroGel, which the Defendants had a duty to disclose.

87. At all times herein mentioned, Defendants conducted a sales and marketing campaign to promote the sale of AndroGel and willfully deceived Plaintiff, Plaintiff's physicians and the general public as to the benefits, health risks and consequences of using AndroGel. Defendants knew of the foregoing, that AndroGel is not safe, fit and effective for human consumption, that using AndroGel is hazardous to health, and that AndroGel has a serious propensity to cause serious injuries to its users, including but not limited to the injuries Plaintiff suffered.

88. Defendants concealed and suppressed the true facts concerning AndroGel with the intent to defraud Plaintiff, in that Defendants knew that Plaintiff's physicians would not prescribe AndroGel, and Plaintiff would not have used AndroGel, if they were aware of the true facts concerning its dangers.

89. As a result of Defendants' fraudulent and deceitful conduct, Plaintiffs suffered injuries and damages as alleged herein.

WHEREFORE, Plaintiffs respectfully request an award of compensatory damages, in addition to all costs, interest and fees, including attorneys' fees, to which they are entitled under law and such other relief as this Honorable Court deems appropriate.

COUNT V
NEGLIGENT MISREPRESENTATION

90. Plaintiffs incorporate by reference herein each of the allegations set forth in this Complaint as though fully set forth herein.

91. From the time AndroGel was first tested, studied, researched, evaluated, endorsed, manufactured, marketed and distributed, and up to the present, Defendants made misrepresentations to Plaintiff, Plaintiff's physicians and the general public, including but not limited to the misrepresentation that AndroGel was safe, fit and effective for human use. At all times mentioned, Defendants conducted sales and marketing campaigns to promote the sale of AndroGel and willfully deceived Plaintiff, Plaintiff's physicians and the general public as to the health risks and consequences of the use of AndroGel.

92. The Defendants made the foregoing representation without any reasonable ground for believing them to be true. These representations were made directly by Defendants, by sales representatives and other authorized agents of Defendants, and in publications and other written materials directed to physicians,

patients and the public, with the intention of inducing reliance and the prescription, purchase and use AndroGel.

93. The representations by the Defendants were in fact false, in that AndroGel is not safe, fit and effective for human consumption, using AndroGel is hazardous to one's health, and AndroGel has a serious propensity to cause serious injuries to users, including but not limited to the injuries suffered by Plaintiff.

94. The foregoing representations by Defendants, and each of them, were made with the intention of inducing reliance and the prescription, purchase and use of AndroGel.

95. In reliance of the misrepresentations by the Defendants, and each of them, Plaintiff was induced to purchase and use AndroGel. If Plaintiff had known of the true facts and the facts concealed by the Defendants, Plaintiff would not have used AndroGel. The reliance of Plaintiff upon Defendants' misrepresentations was justified because such misrepresentations were made and conducted by individuals and entities that were in a position to know the true facts.

96. As a result of the foregoing negligent misrepresentations by Defendants, Plaintiffs suffered injuries and damages as alleged herein.

WHEREFORE, Plaintiffs respectfully request an award of compensatory damages, in addition to all costs, interest and fees, including attorneys' fees, to which they are entitled under law and such other relief as this Honorable Court deems appropriate.

COUNT VI
LOSS OF CONSORTIUM

97. Plaintiffs incorporate by reference all other paragraphs of this complaint as if fully set forth, and further allege as follows:

98. Plaintiff Marianne Albano is the wife of John F. Albano.

99. As a result of the medical conditions developed by her husband and the medical treatment and hospitalizations that he endured, Plaintiff Marianne Albano:

- a. lost a substantial measure of her husband's household services;
- b. lost, and will continue to lose in the future, a substantial measure of her husband's consortium; and
- c. suffered the loss of services, loss of financial support, loss of society including loss of companionship, care, assistance, and attention, and mental anguish entitling her to compensatory damages and attorney's fees.

100. As a direct and proximate result of one or more of these wrongful acts or omissions of the Defendants, Plaintiff Marianne Albano suffered injuries.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, together with interest, costs of suit, attorneys' fees and all such other relief as the Court deems appropriate.

PUNITIVE DAMAGES ALLEGATIONS

101. Plaintiffs incorporate by reference here each of the allegations set forth in this Complaint as though fully set forth herein.

102. The acts, conduct, and omissions of Defendants, as alleged throughout this Complaint were willful and malicious. Defendants committed these acts with a conscious disregard for the rights of Plaintiff and other AndroGel users and for the

primary purpose of increasing Defendants' profits from the sale and distribution of AndroGel. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages against Defendants in an amount appropriate to punish and make an example of Defendants.

103. Prior to the manufacturing, sale, and distribution of AndroGel, Defendants knew that AndroGel was in a defective condition as previously described herein and knew that those who were prescribed the medication would experience and did experience severe physical, mental, and emotional injuries. Further, Defendants, through their officers, directors, managers, and agents, knew that the medication presented a substantial and unreasonable risk of harm to the public, including Plaintiff and as such, Defendants unreasonably subjected consumers of said drugs to risk of injury or death from using AndroGel.

104. Despite its knowledge, Defendants, acting through their officers, directors and managing agents for the purpose of enhancing Defendants' profits, knowingly and deliberately failed to remedy the known defects in AndroGel and failed to warn the public, including Plaintiff, of the extreme risk of injury occasioned by said defects inherent in AndroGel. Defendants and their agents, officers, and directors intentionally proceeded with the manufacturing, sale, and distribution and marketing of AndroGel knowing these actions would expose persons to serious danger in order to advance Defendants' pecuniary interest and monetary profits.

105. Defendants' conduct was despicable and so contemptible that it would be looked down upon and despised by ordinary decent people, and was carried on by

Defendants with willful and conscious disregard for the safety of Plaintiff, entitling Plaintiff to exemplary damages.

WHEREFORE, Plaintiffs respectfully request an award of punitive damages, in addition to all costs, interest and fees, including attorneys' fees, to which he is entitled under law and such other relief as this Honorable Court deems appropriate.

PRAYER FOR RELIEF

Plaintiffs respectfully request judgment against Defendants on each of the above counts as follows:

- a. Compensatory damages to Plaintiffs for past and future damages, including but not limited to pain and suffering for severe and permanent personal injuries, healthcare costs, medical monitoring together with all interest and costs as provided by the law;
- b. Exemplary damages for the wanton, willful, fraudulent, and reckless acts of Defendants who demonstrated a complete disregard and reckless indifference for the safety and welfare of the general public and Plaintiff, in an amount sufficient to punish Defendants and deter future similar conduct;
- c. Plaintiffs' attorney's fees;
- d. Plaintiffs' costs of the proceedings; and
- e. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

The Plaintiffs hereby demand a trial by jury on all counts and as to all issues.

Dated: January 28, 2016

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Dianne M. Nast", written over a horizontal line.

Dianne M. Nast (PA Atty. ID No. 24424)
Daniel N. Gallucci (PA Atty. ID No. 81995)
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CIVIL COVER SHEET

16.W.472

JS-44 (Rev. 12/12)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
John F. Albano and Marianne Albano

(b) County of Residence of First Listed Plaintiff Barnstable County, MA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Dianne M. Nast, Daniel N. Gallucci, Joanne E. Matusko
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DEFENDANTS
AbbVie Inc., and Abbott Laboratories, Inc.

County of Residence of First Listed Defendant Lake County, IL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question *(U.S. Government Not a Party)*

Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

Citizen of This State	<input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i> <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act-Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	PROPERTY RIGHTS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			SOCIAL SECURITY	FEDERAL TAX SUITS
			<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District *(specify)*

6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
28 U.S.C.A. Section 1332

Brief description of cause:
Healthcare Personal Injury/Product Liability

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ more than 150,001

CHECK YES only if demanded in complaint
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions)*

JUDGE Transferred to Judge Matthew F. Kemelly

DOCKET NUMBER MDL No. 2545

DATE 01/28/2016

SIGNATURE OF ATTORNEY OF RECORD *Carroll J. Matusko*

JAN 28 2016

FOR OFFICE USE ONLY

RECEIPT: AMOUNT APPLYING FEE JUDGE MAG. JUDGE



UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 310 Lund Farm Way, Brewster, MA 02631

Address of Defendant: 1 North Waukegan Road, North Chicago, IL 60064

Place of Accident, Incident or Transaction: Barnstable County, Massachusetts
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7 1(a))
Yes No

Does this case involve multidistrict litigation possibilities?
Yes No

RELATED CASE, IF ANY.
Case Number: MDL No. 2545 Judge Matthew F. Kennelly (ND of IL) Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes No

CIVIL: (Place IN ONE CATEGORY ONLY)

- | | |
|---|--|
| <p>A. Federal Question Cases:</p> <ol style="list-style-type: none"> 1. <input type="checkbox"/> Indemnity Contract, Marine Contract, and All Other Contracts 2. <input type="checkbox"/> FELA 3. <input type="checkbox"/> Jones Act-Personal Injury 4. <input type="checkbox"/> Antitrust 5. <input type="checkbox"/> Patent 6. <input type="checkbox"/> Labor-Management Relations 7. <input type="checkbox"/> Civil Rights 8. <input type="checkbox"/> Habeas Corpus 9. <input type="checkbox"/> Securities Act(s) Cases 10. <input type="checkbox"/> Social Security Review Cases 11. <input type="checkbox"/> All other Federal Question Cases
(Please specify) _____ | <p>B. Diversity Jurisdiction Cases:</p> <ol style="list-style-type: none"> 1. <input type="checkbox"/> Insurance Contract and Other Contracts 2. <input type="checkbox"/> Airplane Personal Injury 3. <input type="checkbox"/> Assault, Defamation 4. <input type="checkbox"/> Marine Personal Injury 5. <input type="checkbox"/> Motor Vehicle Personal Injury 6. <input type="checkbox"/> Other Personal Injury (Please specify) 7. <input checked="" type="checkbox"/> Products Liability 8. <input type="checkbox"/> Products Liability Asbestos 9. <input type="checkbox"/> All other Diversity Cases
(Please specify) _____ |
|---|--|

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Daniel N. Gallucci, counsel of record do hereby certify:
 Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs.
 Relief other than monetary damages is sought.

DATE: 1/28/2016 [Signature] 81995
 Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

JAN 28 2016

DATE: _____ Attorney-at-Law Attorney I.D.#

SD

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

John F. Albano and Marianne Albano : CIVIL ACTION
v. :
AbbVie Inc., and Abbott Laboratories, Inc. : NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) **(X)**
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

01/28/2016 *[Signature]* Plaintiffs
Date **Attorney-at-law** **Attorney for**

215-923-9300 215-923-9302 dgallucci@nastlaw.com
Telephone **FAX Number** **E-Mail Address**

(Civ. 660) 10/02

JAN 28 2016

Court Name: EDPA-Philadelphia
Division: 2
Receipt Number: PPE1J4481
Cashier ID: stomas
Transaction Date: 01/29/2016
Payer Name: NASTLAW LLC

CIVIL FILING FEE
For: NASTLAW LLC
Amount: \$400.00
CIVIL FILING FEE
For: NASTLAW LLC
Amount: \$400.00

PAPER CHECK CONVERSION
Remitter: NASTLAW LLC
Check/Money Order Num: 4369
Amt Tenders: \$3,600.00

Total Due: \$3,600.00
Total Tenders: \$3,600.00
Change Amt: \$0.00

16-CV-466 TO 474

Only when bank clears the check,
money order, or verifies credit of
funds is the fee or debt officially
paid or discharged. A \$53 fee will
be charged for a returned check.