



**United States District Court**

**Johnson v. Lexcorp**

**By Christopher Ballesteros**

UNITED STATES DISTRICT COURT

**Pat Johnson**

Plaintiff

vs.

**Lexcorp Pharmaceuticals**

Defendant

**Summary of the Facts Stipulated**

Pat Johnson is a 51-year old resident of Gary, Indiana. Pat is a lifelong resident of Gary, and is married to Morgan Johnson, 48. They have two teenage children, Jan, age 17, and Taylor, age 14. Pat has suffered from chronic pain ever since an industrial accident when Pat was 30 years old, and was recently prescribed a new painkiller, Chromithor, to alleviate the pain from the old injury. Three months after beginning regular ingestion of the drug, Pat suffered a debilitating stroke to the left side of the body. After receiving two and a half months of intensive physical therapy and medical treatment, Pat and the Johnson family filed for bankruptcy.

Additionally, two months after Pat began taking Chromithor, the drug's manufacturer, Lexcorp Pharmaceuticals, modified the drug label of Chromithor to indicate that cranial embolism (possibly leading to stroke) was a side effect with an "unlikely" chance of occurring, a change from the previous designation of "rare". In the next month, Chromithor sales plummeted nearly 40%, as doctors became less likely to purchase or prescribe the painkiller.

Pat filed suit in District Court alleging that Chromithor caused the stroke and seeking compensatory and punitive damages totaling \$10 million. Lexcorp Pharmaceuticals denied the claim, stating that the label modification was not negligent and that the company's product did not cause the stroke.

**Relevant Law**

Note: Liability law, especially regarding product liabil-

ity, is not dictated by a hard-and-fast measure of negligence. It is determined primarily by case law, including a pair of Supreme Court decisions, as well as a few pillars of common law. For simplicity's sake, these requirements have been simplified to three points of contention:

- Did Lexcorp know of the high risk of stroke before releasing the drug?
- Was Pat Johnson adequately informed of the risks of Chromithor?
- Was the drug the reason that Pat Johnson suffered the stroke?

### **Instructions to the Jury**

Since this is a civil case, not a criminal case, there will not be a "guilty" or "not guilty" verdict. Similarly, there is not a prosecution, but a plaintiff, who is the party bringing the suit to court. The plaintiff has the burden of proof in this case. It is the burden of the plaintiff, Pat Johnson, to prove by a preponderance of the evidence that the defendant, Lexcorp, should be held liable for Pat's stroke. A preponderance of evidence is a much lower standard than proof beyond a reasonable doubt, the standard used in criminal cases. If you the jury find that it is even slightly more likely than not that Lexcorp was legally responsible for Pat Johnson's stroke, then the defendant must be held liable.

It is also the job of the jury to decide how much, if any, money in damages to award the plaintiff. You must ultimately decide whether to 1) award no damages, 2) award compensatory but not punitive damages, 3) award both punitive and compensatory damages, or 4) to award compensatory and some punitive damages.

## Witness List

### **Plaintiff**

Pat Johnson  
Morgan Johnson  
Doctor Gabriel Castro

### **Defendant**

Dana Williamson  
Alex Fawcett  
Doctor Chris Stewart

### **Note on Witnesses**

Both sides may decide the order in which to call their witnesses. All individuals in this case have intentionally been given gender-neutral names in order to allow delegates of either sex to play their characters.

**Affidavit of Pat Johnson**  
Witness for the Plaintiff

Hello. My name is Pat Johnson, and I am 51 years old. I have lived in Gary, Indiana for my entire life, except for my four years at the University of Indiana at Indianapolis. I am married to Morgan Johnson, my wonderful spouse, and together we have two children, Jan and Taylor. I served in the Army as a Munitions Specialist until I was 29 years old, when I retired at the rank of Captain. I then applied for and received a position with a local construction and contracting firm, where I have worked ever since.

When I was 30 years old I suffered a work-related injury that has caused me considerable pain and hardship for more than twenty years. I was supervising a work site on the side of the highway when a bulldozer swerved to avoid an oncoming car, shattering a support structure that then collapsed partially onto my back. My employer was initially quite hesitant to provide worker's compensation for my injuries, so I filed a lawsuit to cover my medical expenses. The jury in the case proved quite sympathetic to my situation, so I was also awarded a considerable amount of money in the form of punitive damages. My spouse was pivotal in supporting me throughout that time, just as with this time around. I remember Morgan pushing me towards a lawsuit: "You can't let a corporation wrong you like that - you've got to take a stand, both for yourself and for our family." Sadly, my fortunes have not been so kind over the last thirty years; the costs of sending my kids to school and a failed business venture have put me in dire financial straits.

About three months ago, my doctor, Gabriel Castro, prescribed me with a new pain medication that he/she said would be perfect for my chronic back pain. I proceeded on a regular regimen, but sometimes it seemed that it wasn't working too well, so I'd take an extra pill every other day or so. I was really careful, though, and I was careful not to overdose. I was checking in regularly with Doctor Castro, too, who said that it would be fine if I took a couple extra pills if the pain was especially bad. I trust my doctor, and I've never really bothered to question Doctor Castro's prescriptions or advice. I remember that Doctor Castro mentioned something about the Chromithor label changing a few weeks after I started taking the drug, but I don't recall the specifics of that conversation.

About a hundred days after I started taking Chromithor, I started to notice that I was tingling on the left side of my body. I didn't think much of it - I've struggled to quit smoking over the years, and my diet isn't what it used to be, but I've always gotten a clean bill of health from Doctor Castro. I remember the doctor telling me, "Pat, I know you're going to be fine, and I pray that you are, because if you get sick I won't know which of the pain killers made you sick."

About an hour after I started to notice the tingling, though I lost control over my left arm and leg and collapsed on the ground, unconscious. My spouse called the ambulance at that point, and I woke up in the hospital, where I was forced to spend weeks of time and thousands of dollars on rehabilitation. The whole fiasco made me unable to work for months, and drove my family into bankruptcy. Although I have recovered most of the functionality of the left side of my body, I can't begin to express the pain and suffering my family and I have been through in the last few months.

I trusted Chromithor, and it cost me, both financially and physically.

---

Pat Johnson

So Sworn and Testified to me this 17<sup>th</sup> of July, 2009

---

Joseph Andrew Smith, Notary Public

**Affidavit of Morgan Johnson**  
Witness for the Plaintiff

Howdy. My name is Morgan Johnson, and I have been married to Pat for more than 30 years - we got married right out of high school like the reckless kids we were, and attended the University of Indiana at Indianapolis together for four years. I've been with Pat through the good times, like the birth of our two beautiful children, and the bad times, such as Pat's tragic accident. I've worked for my entire professional career as a consumer advocate, although the firm at which I worked recently went bankrupt due to the changes in the economy.

My life's work has been sticking up for the little guy - honestly, nothing angers me more than a corporation making a mess of peoples lives and trying to get away with it by covering up their mistakes. I've been involved in driving a number of cases towards litigation, including my spouse's first lawsuit. I remember the first case quite well - my husband didn't want to pursue the case at first because he thought the incident wasn't his company's fault. I set Pat straight, through, and we won almost the entire amount that we sued for. Pat has been in constant pain ever since that accident, and he's been through almost ten different pain medications.

Pat has been gaining a little weight since he passed the big 5-0 mark a year ago. I suppose you could call it something of a mid-life crisis. Pat's been changing a lot of things, like eating more junk food and sneaking a cigarette every once in a while. Things seemed to be getting a bit better when Pat started taking Chromithor, though; it seemed to be working more effectively than the other medications Doctor Castro has prescribed. Pat admittedly sounded a little frustrated sometimes, and I heard Pat on the phone once talking with the doctor, saying something like, "Can't I take more than you prescribed? I just want the pain to stop - it's not like those side effects actually happen to anyone."

I couldn't hear an answer on the other end of the line, but I think I saw Pat taking more pills than usual during the next few days. I'm not really sure. I'm not my spouse's babysitter, and I don't know exactly what Pat ingested. Pat had been taking the standard two pills a day for a while when I found Pat blacked out on the kitchen floor with the Chromithor bottle and a glass of water. I'd always known that those drug companies

were irresponsible with their practice of rushing products out before they were fully tested, and my own spouse blacked out on the floor confirmed that.

There is no doubt in my mind that Chromithor caused Pat's stroke. I firmly believe that Lexcorp is responsible for driving my family into bankruptcy and making my spouse suffer through months of physical therapy. I hope they're punished for what they've done. Plus if we win, then maybe I can start my own consumer advocacy firm and get my career back.

---

Morgan Johnson

So Sworn and Testified to me this 17<sup>th</sup> of July, 2009

---

Joseph Andrew Smith, Notary Public

## **Affidavit of Doctor Gabriel Castro**

Witness for the Plaintiff

My name is Gabriel Castro, and I am 37 years of age. I was born in Chicago, Illinois, although my family moved to Gary when I was fourteen years old. I attended the University of Chicago for my undergraduate studies, where I majored in biology and graduated cum laude. I continued to Northwestern Medical School for my medical degree and finished my residency at Indiana General Hospital when I was 29 years of age.

Following in my fathers footsteps, I started my practice in Gary the next year, and I have operated my office there for the last eight years. One of my first patients, and a person that has become a friend of mine over the years, is Pat Johnson, a local contractor. I also treat Pat's spouse, Morgan, and provide referrals for their two children. The practice of medicine is really one of the highlights of my life - I find it very rewarding and exciting, with a few exceptions.

One such low point of my career came just a year after I opened my practice, when I was 31 years old. I was sued by one of my patients for malpractice after I prescribed the wrong medication for a routine condition. I really don't know what she was so upset about - it's not like she died or anything, just a few bouts of vomiting and whatnot. The case was settled out of court, and I was never reprimanded or penalized by the local medical association. My nurses still joke about it, though, and I remember one of them saying, "I don't know about Doctor Castro. He's brilliant, but he doesn't really pay attention too closely. One of those brilliant scatterbrain types." I know they just jest; they have the utmost confidence in me.

I prescribed Pat Johnson with a standard dose of a new painkiller, Chromithor, for a pre-existing back condition. I was very clear on my instructions to Pat, and I told him, "Chromithor takes time to work, so make sure you only take the prescribed dose. No more, no less." About midway through his treatment regiment, Lexcorp made the news after they changed some of the markings on bottles of Chromithor to indicate a slightly elevated risk of stroke. I didn't think much of it, but I still mentioned it to Pat in passing during a routine check-up.

Just to be sure that Pat didn't fall victim to a stroke

from any cause, I had advised Pat a few months ago to begin an improved diet and exercise regimen and to quit smoking, as cigarette smoking and a subpar diet can be risk factors for strokes. That said, I do not believe that Pat is in anything less than good health overall. To my knowledge, Pat used Chromithor responsibly and never strayed substantially from the recommended dosage.

I had not heard from Pat until a few weeks ago, when Pat's lawyers contacted me in connection with today's lawsuit. I learned from them that Pat had suffered a stroke, which Pat and Morgan believed to be linked to Pat's use of Chromithor. Given the warnings that were all over the medical community in news, I wasn't surprised at all. In my professional opinion, and to the best of my knowledge, Pat's Chromithor prescription, in its recommended dose, led directly to Pat's stroke and subsequent hospitalization. In the interests of being open and honest, I am being compensated for my appearance in court today. This is the first time I have been paid to testify, and I am receiving a modest \$200 per hour.

---

Gabriel Castro, M.D.

So Sworn and Testified to me this 18<sup>th</sup> of July, 2009

---

Joseph Andrew Smith, Notary Public

## **Affidavit of Dana Williamson**

Witness for the Defense

My name is Dana Williamson, and I am a registered nurse working at Saint Joseph's Hospital in Gary, Indiana. I have been working as a nurse for three years, including a year that I spent at the practice of Doctor Gabriel Castro. I attended school from kindergarten all the way through high school in Gary, and I graduated as the salutatorian of Jackson Memorial School. I spent four years in Los Angeles, attending the University of California at Los Angeles, where I received my nursing degree and graduated with honors. I considered continuing my studies to become a nurse practitioner or even a doctor, but financial constraints made that path impossible.

I applied for and received a position with a family medical practice run by the Castro family. Unfortunately, the Doctor, Gabriel Castro, and I never really got along. Gabriel used to yell at me over the smallest things. I can handle that, but what really upset me were the dangerous medical mistakes he made because of simple carelessness. I remember one time he told me that I should, "Go find another job, because you're not any help around here." It was a very hurtful comment, and I found it extremely ironic, because I have precious little respect for the medical expertise of Doctor Castro.

I recall that once he was talking on the phone with a patient about a drug called Chromithor. I didn't hear the whole conversation, and I don't know who Doctor Castro was speaking to, but he gave a great deal of poor medical advice and displayed a surprising degree of recklessness. Doctor Castro said, "You know, those dosages on the side are really just suggestions - unless you take way too much you'll be fine. If I were you I'd be more worried about your smoking and diet problems - those are going to catch up with you in a big way if you're not careful." The first person that came to my mind was Pat Johnson.

Pat was a disaster waiting to happen if I've ever seen one. Pat not only smoked, but had a horrible diet, at least according on the charts that I'd read in preparation for Pat's visits (something that Doctor Castro never did). I don't know why Doctor Castro prescribed another painkiller to Pat. I'm no doctor, but all that Pat really needed was a healthier lifestyle.

Eventually, I got fed up with Doctor Castro's irresponsi-

bility and carelessness. I handed in my letter of resignation about two years ago, and I've worked happily under real professionals for the last 22 months at Saint Joseph's Hospital.

---

Dana Williamson

So Sworn and Testified to me this 19<sup>th</sup> of July, 2009

---

Joseph Andrew Smith, Notary Public

## **Affidavit of Alex Fawcett**

Witness for the Defense

Good afternoon. My name is Alex Fawcett, and I am the vice president for Research and Development at Lexcorp Pharmaceuticals. I am thirty-nine years of age, and I was born and raised in New York City. I attended Columbia University for both my undergraduate and business school studies, graduating fifteen years ago this November. I was recruited straight out of business school by Lexcorp Pharmaceuticals, and I've worked there ever since. I was first assigned to the marketing section of Lexcorp, although I was transferred to Research and Development about two years after I started working.

After working on some small modifications for a number of existing drugs distributed by Lexcorp, I talked to my lead researcher, Doctor Chris Stewart, about the progress of a new painkiller being developed by the department. Doctor Stewart has been working on a drug known as "Chromithor" for the last several years and described the drug to me as "being my life's work." I understand that Chris spent most of Chris' professional career working on Chromithor, and I have an immense amount of respect for all that Chris has done for the company. Our conversation focused mainly on when Chromithor would be ready for release.

Doctor Stewart informed me that the drug was extremely safe by the standards of painkillers, even going so far as to say that it would "revolutionize the drug industry." Doctor Stewart then went through a long laundry list of possible side effects, the most serious of which was stroke. Doctor Stewart said that although it would be possible to put Chromithor on the market immediately, we might want to consider waiting until after the second round of clinical testing for Chromithor had been completed. This was especially true, Chris said, because this second round of testing - which is not required by the Food and Drug Administration - might force us to make some modifications to the warning labels accompanying the drug.

Ultimately, I decided to go ahead and release the drug before finishing the second round of tests. Although Chris expressed some initial hesitation in releasing Chromithor before the drug was fully tested by Chris' standards, I was able to convince Chris that the risk was worth the investment. I reviewed all the facts and charts with which I was presented, and

to this day I stand firmly behind the brilliant work of Doctor Stewart and his research team. Lexcorp only releases painkillers and other drugs of the highest quality - certainly nothing that would jeopardize the public health in any way. We may have made a few extra bucks by releasing Chromithor before testing was complete, but it's important to note that the changes that came after the second round of testing ended were barely worth mentioning anyway.

Truth be told, I don't think that anyone would have even noticed the changes if those pesky consumer advocates hadn't seized on the exchange of a single word. I'm not particularly fond of those groups, and one thing that I absolutely cannot stand is a person that tries to blame their own poor health choices on a company that is only trying to improve public health.

I continue to stand behind the product that I helped develop and sell one hundred percent, and I firmly believe that Lexcorp did nothing negligent or harmful to the plaintiff.

---

Alex Fawcett

So Sworn and Testified to me this 20<sup>th</sup> of July, 2009

---

Joseph Andrew Smith, Notary Public

**Affidavit of Doctor Chris Stewart**  
Witness for the Defense

My name is Chris Stewart, and I am the lead researcher for Lexcorp Pharmaceuticals. I am forty-five years of age, and I was born and raised in the lovely state of Rhode Island. I have not worked in the Pharmaceutical industry for my entire life. In fact, I spent the vast majority of my career working in a hospital in the outskirts of Providence, Rhode Island. I attended Brown University, where I double-majored in bioengineering and pre-medicine and graduated magna cum laude with distinction. I received a number of lucrative offers in the private sector immediately after graduating from Brown, but I decided instead to pursue my life-long dream of becoming an emergency room attending physician.

I attended Harvard Medical School for four years and completed my specialized training in rehabilitation, trauma, and pain management at Northwestern University in Chicago, Illinois. I was lucky enough to find employment almost immediately afterwards, and I was given a position in an emergency room very close to my childhood home while completing my residency. After a while, though, the substantial financial obligations that accompanied my education began to catch up with me. With a relatively low salary, I was forced to seek alternative employment - namely, a job with better pay.

Lexcorp Pharmaceutical Company recruited me about seven years ago, and I am extremely grateful for the many opportunities that I have been afforded there. I can't say that I don't have my doubts about the company sometimes - we physicians are sort of hard-wired to question drug companies in general - but I try to put those thoughts out of my mind.

Without a doubt, my proudest accomplishment is serving as the lead researcher for Lexcorp during the development of a new, revolutionary painkiller known as "Chromithor." The idea of Chromithor is to counteract persistent pain through the slow, sustained release of medication, making it ideal for permanent conditions such as a spinal injury. There are, of course, side effects, but they are relatively standard for a painkiller. I understand that one particular conversation I had with the Vice-President of Research and Development, Alex Fawcett, regarding Chromithor's side effects has become important to the parties in

court here today.

First of all, let me point out that I do not feel that my morals were compromised in any way by Alex's slight hurry to get Chromithor on the market. I am very proud of my handiwork in developing this drug, and it is my professional opinion that a person with a proper diet and lifestyle faces a negligible risk from Chromithor. Obviously, I cannot personally interact with every patient who is taking Chromithor, so it is the responsibility of the attending physician to determine the appropriateness of the drug for his or her patients.

Alex Fawcett mentioned to me that "there is a significant financial incentive for putting Chromithor on the market," although Alex did stress to me that "the consequences of putting a faulty drug on the market far outweigh any monetary issues." I figured that pushing the production of Chromithor up by a few months wouldn't cause any harm, especially after all that Lexcorp has done for me. I instructed my associates to authorize release of Chromithor, although the final, non-FDA mandated round of stroke side effect testing had not yet completed. Although we did eventually modify the label to indicate a change of stroke likelihood based on those new results, I would like to point out that the actual change was minuscule, and the small difference just barely pushed the risk over the line.

Given all of what I have stated, it is my professional opinion that the modified timeline was medically and ethically responsible.

---

Chris Taylor

So Sworn and Testified to me this 20<sup>th</sup> of July, 2009

---

Joseph Andrew Smith, Notary Public