

IN THE SUPREME COURT OF THE STATE OF NEVADA

TEVA PARENTERAL MEDICINES,
INC., A DELAWARE
CORPORATION, F/K/A SICOR
PHARMACEUTICALS, INC.; SICOR,
INC.; BAXTER HEALTHCARE
CORPORATION,

No. 57085

Electronically Filed
Mar 09 2011 04:28 p.m.
Tracie K. Lindeman

Appellants,

vs.

HENRY CHANIN AND LORRAINE
CHANIN, HUSBAND AND WIFE;
GASTROENTEROLOGY CENTER
OF NEVADA, LLP; DESERT
SHADOW ENDOSCOPY CENTER,
LLC, A NEVADA LIMITED
LIABILITY COMPANY; RAJAT
SOOD, M.D.; BOBBIE GLASS-
SERAN, CRNA,

Respondents.

**MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF
AMERICA FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE**

Pursuant to Nevada Rule of Appellate Procedure 29(a), the Chamber of Commerce of the United States of America respectfully moves for leave to file the attached amicus curiae brief in support of appellants in this case.

The Chamber of Commerce of the United States of America (“the Chamber”) is the world’s largest federation of businesses and associations. The Chamber represents 300,000 direct members and indirectly represents an underlying membership of more than three million U.S. business and professional organizations of every size, and in every sector and geographic region of the country. The Chamber has thousands of members in Nevada and thousands more conduct substantial business in the State. For that reason, the Chamber and its members have a significant interest in the administration of civil justice in the Nevada courts. One of the Chamber’s most important functions is to represent its

1 members' interests by filing amicus curiae briefs in cases involving issues of concern to
2 American business.

3 There are few issues of greater concern to American business than arbitrary
4 punitive damages awards. For that reason, over the past two decades, the Chamber has
5 filed a brief in every significant punitive damages case before the U.S. Supreme Court.
6 This case involves one of the nation's more egregiously excessive punitive awards—a
7 half-billion dollars on top of a \$3.5 million compensatory award—and the issues it
8 presents are of great concern to the Chamber and its members. In *Philip Morris USA v.*
9 *Williams*, 549 U.S. 346, 353 (2007), the Supreme Court recognized that the Due Process
10 Clause “prohibits a State from punishing an individual without first providing that
11 individual with ‘an opportunity to present every available defense.’” Moreover, the Court
12 recognized that, where procedures create a risk of jury confusion—“because, for instance,
13 of the sort of evidence that was introduced at trial or the kinds of argument the plaintiff
14 made to the jury—a court, upon request, must protect against that risk.” *Id.* at 357. The
15 fundamental purpose of such protection is to guard against “risks of arbitrariness,
16 uncertainty, and lack of notice.” *Id.* at 1063. And when punitive damages are awarded,
17 the award must comport with notions of fundamental fairness inherent in the Due Process
18 Clause. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003).

19 As explained in the accompanying brief, the District Court did not follow these
20 safeguards in this case, resulting in a patently unconstitutional award. The Chamber
21 therefore respectfully submits the attached brief urging this Court to safeguard these rights
22 in this case, and remove the potential disincentives that such arbitrary awards create for
23 companies seeking to do business in Nevada.

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As explained in the accompanying brief, the District Court did not follow these safeguards in this case, resulting in a patently unconstitutional award. The Chamber therefore respectfully submits the attached brief urging this Court to safeguard these rights in this case, and remove the potential disincentives that such arbitrary awards create for companies seeking to do business in Nevada.

Dated: March 9, 2011.

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On March 9, 2011, I caused to be served a true and correct copy of the foregoing **MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE** by the method indicated:

- BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- BY PERSONAL DELIVERY:** by causing personal delivery by _____, a messenger service with which this firm maintains an account, of the document(s) listed above to the person(s) at the address(es) set forth below.
- BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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