

FILED
SAN MATEO COUNTY

APR 29 2011

Clerk of the Superior Court
By Maia Gault
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO
CENTRAL BRANCH, COMPLEX CIVIL LITIGATION

ASAHI KASEI PHARMA CORPORATION,

Plaintiff,

vs.

ACTELION LTD.; ET AL,

Defendants.

Case No. CIV 478533

SPECIAL VERDICT FORM

We the jury in the within case, find as follows:

I. INTENTIONAL INTERFERENCE WITH THE FASUDIL CONTRACT (TRIAL EXHIBIT 161)

1. Did any of the Defendants intentionally interfere with the Fasudil Contract (Trial Exhibit 161)? ☒ YES ☐ NO
2. If your answer to Question No. 1 is "NO", please proceed to Question No. 4.

If your answer to Question No. 1 is "YES", please check the box below related to each Defendant. Check "YES" if you find that the particular Defendant intentionally interfered with the Fasudil Contract (Trial Exhibit 161). Otherwise, check "NO".

Actelion, Ltd.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion Pharmaceuticals, Ltd.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion Pharmaceuticals U.S., Inc.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion U.S. Holding Company	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Jean-Paul Clozel	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Martine Clozel	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Simon Buckingham	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO

3. If you checked "YES" to any Defendant in Question No. 2, what are Asahi's damages, if any, caused by the intentional interference with the Fasudil Contract :

Lost Royalties And Milestone Payments:	\$ <u>358.95 million</u>
Development Costs:	\$ <u>187.4 million</u>
IND/Regulatory Maintenance Costs:	\$ <u>450,000</u>
Lost Option Indication Payments:	\$ <u>Ø</u>
Lost Investigator-Sponsored Study Costs:	\$ <u>75,000</u>
TOTAL	\$ <u>546,875,000.00</u>

Proceed to Question No. 4

II. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONSHIP

4. Did any of the Defendants intentionally interfere with Asahi's prospective economic relationship with CoTherix? ☒ YES ☐ NO
5. If your answer to Question No. 4 is "NO", please proceed to Question No. 7.

If your answer to Question No. 4 is "YES", please check the box below related to each Defendant. Check "YES" if you find that the particular Defendant intentionally interfered with Asahi's prospective economic relationship with CoTherix. Otherwise, check "NO".

Actelion, Ltd.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion Pharmaceuticals, Ltd.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion Pharmaceuticals U.S., Inc.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion U.S. Holding Company	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Jean-Paul Clozel	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Martine Clozel	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Simon Buckingham	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO

6. If you checked "YES" to any Defendant in Question No. 5, what are Asahi's damages, if any, caused by the intentional interference with Asahi's prospective economic relationship with CoTherix. In answering this question, you may not include any damages that you awarded in Question No. 3.:

Lost Royalties And Milestone Payments:	\$	<u>Ø</u>
Development Costs:	\$	<u>Ø</u>
IND/Regulatory Maintenance Costs:	\$	<u>Ø</u>
Lost Option Indication Payments:	\$	<u>Ø</u>
Lost Investigator-Sponsored Study Costs:	\$	<u>Ø</u>
TOTAL	\$	<u>Ø</u>

Proceed to Question No. 7

III. BREACH OF CONFIDENTIALITY AGREEMENT (TRIAL EXHIBIT 310)

7. Did any of Defendants Actelion Ltd., Actelion Pharmaceuticals, Ltd. or Actelion Pharmaceuticals U.S., Inc. breach the Confidentiality Agreement (Trial Exhibit 310)? ☒ YES ☐ NO
8. If your answer to Question No. 7 is "NO," please proceed to Question No. 10.

If your answer to Question No. 7 is "YES", please check the box below related to each particular Defendant. Check "YES" if you find that the particular Defendant breached the Confidentiality Agreement (Trial Exhibit 310). Otherwise, check "NO".

Actelion, Ltd.	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
Actelion Pharmaceuticals, Ltd.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion Pharmaceuticals U.S., Inc.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO

9. As to each Defendant for whom you checked "YES" in Question No. 8, what are Asahi's damages, if any, caused by that particular Defendant's breach of the Confidentiality Agreement:

Actelion, Ltd.	\$ <u>V/A</u>
Actelion Pharmaceuticals, Ltd.	\$ <u>1.00</u>
Actelion Pharmaceuticals U.S., Inc	\$ <u>1.00</u>

Proceed to Question No. 10

IV. BREACH OF CONFIDENCE

10. Did any of Defendants Actelion Ltd., Actelion Pharmaceuticals, Ltd., Actelion Pharmaceuticals U.S., Inc. or Jean-Paul Clozel breach the confidence of Asahi?

☒ YES ☐ NO

11. If your answer to Question No. 10 is "NO", please proceed to Question No. 13.

If your answer to Question No. 10 is "YES", please check the box below related to each particular Defendant. Check "YES" if you find that the particular Defendant breached the confidence of Asahi. Otherwise, check "NO".

If you checked "YES" as to a particular Defendant in Question No. 8, then check "NO" as to that particular Defendant in this question.

Actelion, Ltd.

☒ YES ☐ NO

Actelion Pharmaceuticals, Ltd.

☐ YES ☒ NO

Actelion Pharmaceuticals U.S., Inc.

☐ YES ☒ NO

Jean-Paul Clozel

☒ YES ☐ NO

12. As to each Defendant for whom you checked "YES" in Question No. 11, what are Asahi's damages, if any, caused by that particular Defendant's breach of confidence of Asahi:

Actelion, Ltd.	\$ <u>1.00</u>
Actelion Pharmaceuticals, Ltd.	\$ <u>N/A</u>
Actelion Pharmaceuticals U.S., Inc	\$ <u>N/A</u>
Jean-Paul Clozel	\$ <u>1.00</u>

Proceed to Question No. 13

V. **ADDITIONAL FINDINGS**

Answer Question No. 13 only if your answer to Question No. 1 was "YES",

13. Did any of the Defendants for whom you checked "YES" in Question No. 2 act with malice, oppression or fraud in intentionally interfering with the Fasudil Contract (Trial Exhibit 161)? ☒ YES ☐ NO
14. If your answer to Question No. 13 is "NO", please proceed to Question No. 16.

If your answer to Question No. 13 is "YES", please check the box below related to each Defendant. Check "YES" if you find that a particular Defendant acted with malice, oppression or fraud in intentionally interfering with the Fasudil Contract (Trial Exhibit 161). Otherwise, check "NO".

Actelion, Ltd.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion Pharmaceuticals, Ltd.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion Pharmaceuticals U.S., Inc.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion U.S. Holding Company	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Jean-Paul Clozel	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Martine Clozel	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Simon Buckingham	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO

15. If you checked "YES" in Question No. 14 for Actelion, Ltd., Actelion Pharmaceuticals, Ltd., Actelion Pharmaceuticals U.S., Inc., and/or Actelion U. S. Holding Company, do you find that:

- a. an individual person who engaged in conduct constituting malice, oppression or fraud was an officer, director or managing agent of that particular Defendant, and was acting on behalf of that particular Defendant at the time of the conduct constituting malice, oppression or fraud; or ☒ YES ☐ NO
- b. an individual person's conduct constituting malice, oppression or fraud was authorized by an officer, director or managing agent of that particular Defendant; or ☐ YES ☒ NO
- c. an officer, director or managing agent of that particular Defendant knew of the individual's conduct constituting malice, oppression or fraud and adopted or approved that conduct after it occurred. ☐ YES ☒ NO

Proceed to Question No. 16

Answer Question No. 16 only if your answer to Question No. 4 was "YES",

16. Did any of the Defendants for whom you checked "YES" in Question No. 5 act with malice, oppression or fraud in intentionally interfering with Asahi's prospective economic relationship with CoTherix? ☒ YES ☐ NO

17. If your answer to Question No. 16 is "NO", please have the Jury Foreperson sign the Verdict Form and return it to the Bailiff.

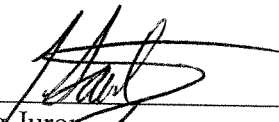
If your answer to Question No. 16 is "YES", please check the box below related to each Defendant. Check "YES" if you find that the particular Defendant acted with malice, oppression or fraud in intentionally interfering with Asahi's prospective economic relationship with CoTherix. Otherwise, check "NO".

Actelion, Ltd.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion Pharmaceuticals, Ltd.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion Pharmaceuticals U.S., Inc.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Actelion U.S. Holding Company	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Jean-Paul Clozel	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Martine Clozel	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Simon Buckingham	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO

18. If you checked "YES" in Question No. 17 for Actelion, Ltd., Actelion Pharmaceuticals, Ltd., Actelion Pharmaceuticals U.S., Inc., and/or Actelion U. S. Holding Company, do you find that:

- a. an individual person who engaged in conduct constituting malice, oppression or fraud was an officer, director or managing agent of that particular Defendant, and was acting on behalf of that particular Defendant at the time of the conduct constituting malice, oppression or fraud; or ☒ YES ☐ NO
- b. an individual person's conduct constituting malice, oppression or fraud was authorized by an officer, director or managing agent of that particular Defendant; or ☐ YES ☒ NO
- c. an officer, director, or managing agent of that particular Defendant knew of the individual's conduct constituting malice, oppression or fraud and adopted or approved that conduct after it. ☐ YES ☒ NO

Signed:



Presiding Juror

Dated: April 29, 2011

**AFTER THE VERDICT FORM HAS BEEN SIGNED, DELIVER THE VERDICT FORM
TO THE BAILIFF**