AbbVie Does Not Appeal 9th Circuit Heightened Scrutiny Ruling

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A ruling by a federal appeals court on juror selection will stand, Reuters reports. AbbVie, a pharmaceutical company involved in the case, will not appeal the ruling to the U.S. Supreme Court.

A unanimous decision by the 9th U.S. Circuit Court of Appeals, which is headquartered in San Francisco, ruled that as a result of a potential juror being wrongly removed because he is gay that a new trial was warranted. There will be no appeal by AbbVie of the decision about the juror, but the company has not yet decided if it will appeal the decision for a new trial.

The 9th Circuit ruled that discrimination based on sexual orientation is subject to heightened scrutiny, which means courts consider equal protection claims more carefully. They based their ruling on a U.S. Supreme Court decision to strike down a portion of the Defense of Marriage Act. As a result, a Supreme Court case barring juror strikes based on race now also covers sexual orientation.

In 2007, Abbott Laboratories raised the price of the HIV drug Norvir by 400 percent. GlaxoSmithKline (GSK) soon after filed an antitrust lawsuit against Abbott claiming the high price prevented the booster from being used with other drugs. In 2011, a jury ruled mostly in favor of Abbott, saying the company did not hike the price out of malice.

GSK appealed using as one of its arguments for a new trial that an Abbott lawyer had a man who identified himself as gay removed from the jury pool because of his sexual orientation. Abbott claims it removed the man for several other reasons, including that he had a friend who died of AIDS-related complications.

Lawyers in both sides of trials are allowed to remove potential jurors without legal justification. However, the U.S. Supreme Court has ruled that race and gender cannot be used as reasons to remove potential jurors. If a new trial for GSK proceeds, it would be against Abbott spinoff AbbVie.

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