



Liver Condition Linked to Dietary Supplement Leads to \$2 Million Accord in Middlesex

A man who suffered liver failure after taking a dietary supplement agreed to a \$2 million settlement in his Middlesex County products liability suit, *Viloria v. USP Labs*, on April 27.

In the summer of 2013, Benjamin Viloria began taking a supplement called OxyElite that was sold as a safe way to gain muscle and lose weight, according to his attorney, **Matthew Mendelsohn** of **Mazie, Slater, Katz & Freeman** in Roseland. Viloria used the product for several months, until he began experiencing liver problems, he claimed. In October 2013, Viloria's liver failed, and he had to undergo an 11th-hour liver transplant, said Mendelsohn.

In November 2013, USP Labs of Dallas, maker of OxyElite, recalled the product, admitting that "[e]pidemiological evidence shows that use of [OxyElite] products has been associated with serious adverse health consequences, namely serious liver damage or acute liver failure," said Mendelsohn.

Before Viloria began using OxyElite, the Food and Drug Administration warned its manufacturer that its manufacturing process did not comply with best practices and violated the law. In 2013, reports emerged that OxyElite was linked to liver damage, and an FDA investigation found it was "adulterated," Mendelsohn said. The FDA ordered USP Labs to take OxyElite off the market, but the company instead claimed the liver injuries were caused by counterfeit versions of the drug, Mendelsohn said.

In April 2014, Viloria sued USP Labs, claiming the biopsy of his liver established that it failed due to OxyElite. In late 2015, the U.S. Department of Justice brought charges against USP Labs and several individuals in the Northern District of Texas. In January 2016, Viloria's suit was stayed pending the outcome of the criminal case, and the parties engaged in settlement discussions.



MATTHEW MENDELSON
COURTESY OF MATTHEW MENDELSON

In March 2019, USP Labs and five individuals pleaded guilty to felony charges in the criminal case, and in February 2020, the parties in the civil suit agreed to a \$2 million settlement of Viloria's claims.

Viloria, now 49, has returned to work but will have to take medications for the rest of his life to prevent his body from rejecting the transplanted liver, and those drugs have their own side effects and complications, Mendelsohn said.

On April 27, the Department of Justice released funds that had been seized as part of the criminal charges for payment of the settlement, Mendelsohn said.

Pamela Lormand of **Brewer Lormand** in Dallas, who was national counsel for USP, and **Glenn Goodier** of **Jones Walker** in New Orleans, who was settlement counsel, did not respond to requests for comment.

— **Charles Toutant**