



Media Impressions: 9,878,871

August 25, 2009

Health Care

## Lawyer Says Drugmaker Celgene Stole Her Idea

[Matthew Herper](#), 08.25.09, 06:52 PM EDT

**Beth Jacobson pushed doctors to try a novel approach in an effort to save her dying husband. Now she wants \$300 million.**

In 1996, Beth Jacobson was watching her husband, a 35-year-old cardiologist, die from the blood cancer multiple myeloma.

She spent her nights reading medical journals at his bedside and her days calling doctors. One Saturday night, Judah Folkman, the famed Harvard cancer researcher, returned her call, and they came up with the idea of trying thalidomide, famed for causing birth defects as an anti-nausea drug, but also then being tested to treat leprosy.

Thalidomide didn't help her husband, who soon died. But the next patient who got it had an amazing response. Now thalidomide (brand name: Thalomid) and a related drug, Revlimid, generate \$2.2 billion a year for [Celgene](#) ( [CELG](#) - [news](#) - [people](#) ) of Summit, N.J. And Jacobson believes Celgene stole her idea. She filed suit against the drug company in the U.S. District Court of [New Jersey](#) and is asking for \$300 million in damages and 25% of future profits from the drugs.

"I'm proud of the work I have done, I'm proud that so many people are alive today because I came up with this idea," says Jacobson, a lawyer in private practice. She says she "reluctantly" decided to sue when it became apparent the company had no intention of compensating her for her contribution.

A Celgene spokesman says her "allegations have no merit," and that the company is confident in the patents that protect its medicines.

Jacobson's lawsuit illuminates the tension in the increasingly complex relationships between drug companies and patients. In recent years, research funding and expertise from patient advocacy groups has become a powerful force in the invention and development of new medicines. [Vertex Pharmaceuticals](#) ( [VRTX](#) - [news](#) - [people](#) ), [Gilead Sciences](#) ( [GILD](#) - [news](#) - [people](#) ) and [Novartis](#) ( [NVS](#) - [news](#) - [people](#) ) all have had medicines sped up through the efforts of organizations like the Cystic Fibrosis Foundation and the Leukemia and Lymphoma Society.

benefiting from this new trend is that they'll have to pay the patients back somewhere down the line. Until now, Jacobson's story has seemed like an illustration of how patients and companies could work together.

There is no doubt Jacobson played a pivotal role in developing Celgene's drugs. In a 2001 letter to shareholders included in her complaint, Celgene's chief executive and chief scientist said her efforts provided "an important first step in identifying Thalomid's potential as a multiple myeloma therapy."

It was her husband's doctor, Bart Barlogie of the University of Arkansas Medical Center, who ran the first clinical trial to show Thalomid's effect in multiple myeloma. The results were published in *The New England Journal of Medicine* in 1999. Thalomid had been approved for leprosy the year before, but it very quickly became used mostly for myeloma. Celgene quadrupled the price of the drug over the next eight years.

*The New England Journal* article thanks Jacobson by name "for her persistence in recommending the clinical evaluation of thalidomide in the treatment of multiple myeloma."

But just because she played a key role in Thalomid's development doesn't prove that Celgene owes her a dime. Jacobson's lawsuit appears to rely on a novel legal gambit: suing under New Jersey law on counts of "misappropriation of an idea" and "unjust enrichment."

Those arguments are "a long shot" says Linda Fentiman, a professor of law at Pace Law School in White Plains, N.Y. "We allow people to make gifts," says Fentiman. "There's no evidence there was a bargain. It doesn't seem fair on a gut level that they profited, but I don't see any legal basis for either misappropriation or unjust enrichment." She also notes that in the lawsuit it is disclosed that Jacobson had been asked to apply for a seat on Celgene's board in 2005, but that after a new chief executive took over the idea was nixed.

Jacobson's lawyer, Douglas Kline of the Boston firm Goodwin, Procter LLP, says Jacobson was "plainly in mind that there was real economic value in this idea. Beth had the novel idea, she disclosed the idea in confidence to Celgene, and Celgene has used the idea to generate for itself financial profits."

In some previous press accounts of Jacobson's phone call with Judah Folkman, including one published in *Forbes*, he is the one who suggests thalidomide as an option. In her current lawsuit, the story is told somewhat differently. The filing says that he mentioned thalidomide as one option in childhood leukemias, but that using it in myeloma was her idea. Folkman died last year.

There is absolutely no doubt that Beth Jacobson had an idea that changed the lives of thousands of patients and transformed a tiny biotechnology company. We'll have to see if she is owed any money as a result.