

The suggestion has been made that the damages be apportioned on the basis of each defendant's share of the market.^{18/} This would also not seem to be the answer. Many of these manufacturers distributed their products regionally, and the mere fact that a given defendant had a certain share of the market would by no means indicate that the particular plaintiff was exposed to that defendant's product at all. I think that the ultimate answer here is going to be some apportionment based upon the percentage of use of a particular product by a particular plaintiff. Admittedly, this is very imprecise. However, juries decide issues as unresolvable as this every day.

Another issue for consideration is the effect of a settlement by some but not all defendants. In the Borel case, the court simply subtracted the amount paid by the settling defendants from the amount of the verdict. This issue was not strongly litigated in the Borel case, and it is my view, that in Texas at least, the proper procedure would be to reduce the verdict proportionately.

In a recent case in the Federal Court in Beaumont, 13 of 14 defendants settled for a total of \$400,000. The case

^{18/} A recent California case adopts this view. Sindell v. Abbott Laboratories, #L.A. 31063, Supreme Court of California (1980). This theory is discussed in an article concerned with the liability of various drug manufacturers for damages resulting from the use of Diethyestilbestrol (DES). "DES and a Proposed Theory of Entesprime Liability" 46 Iordham Law Review 963 (1978).