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PRODUCT LIABILITY

Arizona Court of Appeals finds learned intermediary doctrine "inconsistent with Arizona's comparative fault tort system"

The plaintiff/appellant was prescribed and consumed Solodyn (minocycline), marketed by defendant/appellee, Medicis Pharmaceutical. She developed drug-induced lupus, a condition associated with tetracycline-type antibiotics, and warned of in the official labeling of the product. Plaintiff avers, however, that she never received the professional labeling, nor was she warned of the possibility of lupus as recommended in the labeling. However, she did receive 2 consumer-oriented pieces of information: a MediSAVE card provided by her physician that outlined a discount purchase program for Solodyn, and a patient information leaflet from her pharmacy, neither of which warned her of drug-induced lupus.

She sued Medicis in state court, alleging consumer fraud, product liability, and punitive damages claims. Her claims averred that "Medicis knowingly used false pretenses and omitted material facts from the information presented to her regarding Solodyn's risks to induce her to buy and use Solodyn. She also alleged that the drug was unreasonably dangerous because Medicis failed to provide adequate warnings of its known dangers." The trial court summarily dismissed her claims under Arizona Rule of Civil Procedure 12(b)(6) for failure to state a claim under any legal theory under which she could be entitled to relief. Inherent in the trial court's ruling was its reliance on the learned intermediary doctrine, which immunizes pharmaceutical manufactures from product liability suits when they have sufficiently warned the prescriber of the known risks of the drug.

The Court, after a substantial review of the learned intermediary doctrine, and prior Arizona appellate jurisprudence, ultimately found that common law principles subsumed under the doctrine were superseded in 1984 and 1987 by adoption of and amendments to the Uniform Contribution Among Tortfeasors Act (UCATA), A.R.S. §12-2501 *et seq*. Among the rationales for the Act was an attempt to avoid shifting the burden of an insolvent defendant to other defendants; under the Act "each defendant in a product liability case is individually responsible for its own contribution to the plaintiff's injury, independent of the actions of the co-defendants: 'the various participants in the chain of distribution are liable not for the actions of others, but rather for *their own actions* in distributing the defective product.'" The Court held

that “As such, applying the learned intermediary doctrine in the context of prescription pharmaceuticals conflicts with … [the] UCATA …”

Changing realities of the marketing of prescription drugs prompted the Court to overrule its prior reliance on the learned intermediary doctrine: “[Our] conclusion is further supported by the realities of modern-day pharmaceutical marketing. As [plaintiff] points out, drug manufacturers are turning with increasing frequency to direct consumer advertising to promote their products. … Consumers are regularly presented with advertisements for medications to treat a variety of symptoms, prompting them to ask, encourage, and even pressure their medical providers to prescribe these brand-name medications. …While it is true that a patient must first receive a prescription from a ‘learned intermediary’ in order to obtain prescription drugs, a physician no longer is necessarily the consumer’s sole source of information about the effects, benefits, and risks of the medications he or she takes. … Accordingly, under our system of comparative fault, when the manufacturer of a product furnishes false or misleading information to the consumer, that manufacturer should not be shielded from liability simply because it provided adequate warnings to a third party.”

The Court vacated the dismissal of the plaintiff’s claims, except for upholding dismissal of her punitive damages complaint, and remanded for further proceedings. [Watts v. Medicis Pharmaceutical Corp., No. 1 CA-CV 13-0358, Ariz. App. Div. 1, 2015 Ariz. App. LEXIS 12, January 29, 2015]