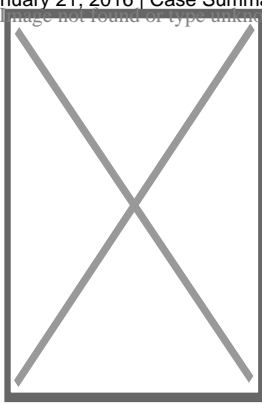


JONES, SKELTON & HOCHULI ATTORNEYS LORI VOEPEL, DON MYLES & JOSH SNELL OBTAIN FAVORABLE OPINION FROM THE ARIZONA SUPREME COURT

January 21, 2016 | Case Summaries, News



Watts v. Medicis Pharmaceutical Corporation – JSH

Attorneys [Lori Voepel](#), [Don Myles](#) and [Josh Snell](#) have obtained a favorable Opinion from the Arizona Supreme Court in an important products liability case. In *Watts v. Medicis Pharmaceutical Corporation*, No. CV-15-0065 (Jan. 21, 2016), the Arizona Supreme Court adopted the “learned intermediary doctrine,” under which a prescription drug manufacturer satisfies its duty to warn end-users by giving appropriate warnings to the prescribing physician or other health-care provider who is in a position to reduce the risks of harm from the drug. The Arizona Supreme Court, which had never previously addressed the doctrine, also rejected a “direct to consumer” marketing exception, joining the vast majority of other jurisdictions that follow the doctrine with no direct to consumer marketing exception.

In largely vacating the underlying Arizona Court of Appeals’ Opinion, the Court rejected Watts’ rationale that the learned intermediary doctrine “creates a blanket immunity for pharmaceutical manufacturers,” because the manufacturer who fails to give adequate warnings to the physician or health-care provider can still be liable. The Supreme Court also rejected the Arizona Court of Appeals’ holding that the learned intermediary doctrine is “incompatible” with the Uniform Contribution Among Tortfeasors’ Act. As the Court explained, Arizona’s UCATA simply requires the apportionment of damages based on degrees of fault. Under the learned intermediary doctrine, the manufacturer that gives adequate warnings to the learned intermediary is simply not at fault. Finally, the Supreme Court rejected Watts’ argument that the doctrine violates the anti-abrogation clause in Arizona’s Constitution.

The Supreme Court upheld the Court of Appeals’ determination that prescription drugs are covered by Arizona’s Consumer Fraud Act and remanded to the trial court on that ground. The Supreme Court expressly left two issues open for further litigation on remand: (1) whether the materials relied upon by Watts constituted “advertising” under the Act, and (2) whether her state consumer fraud claim is pre-empted by federal law. The Court also remanded the case to the trial court for a determination of whether Medicis gave adequate warnings to Watts’ physician or health care provider. If so, her products liability claim must be summarily denied under the learned intermediary doctrine.

Watts, a minor, had sought medical treatment for acne and received a prescription for Solodyn, a drug manufactured by Medicis, which contains minocycline. Watts’ Complaint alleged that after taking two 20-week rounds of Solodyn as prescribed by her health-care provider, she developed drug-induced lupus and autoimmune hepatitis (the latter of which ultimately resolved). Medicis’ full prescribing information materials included warnings that: “The long-term use of minocycline in the treatment of acne has been associated with drug-induced lupus-like syndrome, autoimmune hepatitis and vasculitis,” and that “Autoimmune syndromes, including drug-induced lupus-like syndrome, autoimmune hepatitis, vasculitis and serum sickness have been observed with tetracycline-class drugs, including minocycline.” The full prescribing information also warned that: “Symptoms may be manifested by arthralgia, fever, rash and malaise” and that “Patients who experience such symptoms should be cautioned to stop the drug immediately and seek medical help.” Watts did not allege that she received this full prescribing information, but claimed that she relied on two other publications about the drug (one from her physician and one from her pharmacist) that contained warnings about Solodyn.

JSH received amicus support for its client’s position from several national and statewide organizations whose contributions were pivotal. These include The Product Liability Advisory Council, The Pharmaceutical Research and Manufacturers of America, the U.S. Chamber of Commerce, the U.S. Chamber Litigation Center, the Arizona Chamber of Commerce & Industry, and the Arizona Manufacturers Council.

[Lori Voepel](#) has handled over 300 federal and state appeals in virtually every area of the law, including governmental liability, medical and legal malpractice, employment law, civil rights, insurance defense and bad faith, product liability, school law, prison liability, administrative law, commercial law, construction

law, airline liability, criminal law, workers' compensation, and family law.

[Don Myles](#) focuses his practice on defending clients in cases involving catastrophic injury and wrongful death claims, bad faith and extra-contractual liability, professional liability, and insurance coverage and fraud.

[Josh Snell](#) concentrates his practice on insurance coverage and bad faith, commercial litigation, personal injury defense, and retail law.