PLAINTIFF'S SUES MEDICIS FOR CONSUMER FRAUD, PRODUCT LIABILITY, AND PUNITIVE DAMAGES

January 29, 2015 | Law Alerts, News

Watts v. Medicis Pharmaceutical Corporation
Arizona Court of Appeals, January 29, 2015

Plaintiff's doctor prescribed Solodyn, manufactured and distributed by Medicis, for her chronic acne. Plaintiff used the medicine for twenty weeks, and then was prescribed and took another twenty weeks' worth. Plaintiff received two informational publications, neither of which disclosed any link between the drug and the development of auto-immune diseases. The doctor did give her a "MediSave" card and accompanying information indicating that the drug's safety after 12 weeks' use had not been studied and was not known. An informational insert the pharmacy provided with the prescription advised Plaintiff of possible side effects and safety considerations and warned patients to consult their doctor if their symptoms did not improve within 12 weeks.

Plaintiff began suffering debilitating joint pain and was diagnosed with drug-induced lupus and hepatitis, allegedly a side effect of the Solodyn. She recovered from the hepatitis but might suffer from lupus the rest of her life. She sued Medicis for consumer fraud, product liability, and punitive damages, alleging that Medicis used false pretenses, omitted material facts, and that the drug was unreasonably dangerous without adequate warnings. Plaintiff alleged she did not receive an FDA-approved patient labeling listing joint pain and liver damage as possible side effects. Plaintiff also did not receive the full prescribing information Medicis provided to physicians which warned that lupus-like syndrome and autoimmune hepatitis are possible consequences of long term use. It also warned, in a section labeled "Patient Counseling Information," that patients should be advised that autoimmune syndromes have been observed with tetracycline-class drugs including minocycline.

Medicis moved to dismiss for failure to state a claim, which the trial court granted, in part on the basis of the learned intermediary doctrine. That doctrine says a manufacturer is not liable for failing to warn consumers of a product's potential risks if it provided a proper warning to patient's physician. Watts timely moved for a new trial which was denied.

The court of appeals reversed. First, it rejected Medicis' argument that Plaintiff's appeal was late because a "new trial" motion is not an appropriate motion to file after a dismissal (as opposed to a summary judgment or trial), and thus Plaintiff's new trial motion did not operate to extend Plaintiff's appeal time. The court said the new trial motion was appropriate and extended Plaintiff's deadline to appeal. The court also rejected Medici's other jurisdictional arguments.

On the merits, the court first held that prescription drugs are "merchandise" within the meaning of Arizona's Consumer Fraud Act, A.R.S. § 44-1522 et seq. They are often advertised and sold to consumers like other consumer goods, implicating the need for CFA protection. Additionally, because consumers have a choice as to whether to purchase and use particular drugs once prescribed, they may be deceived by fraudulent misrepresentations. Plaintiff adequately pled a CFA claim by alleging that she relied on promotional materials and labeling stating that the safety of Solodyn for longer than twelve weeks was unknown.

The court then reversed dismissal of the product liability claim, holding that the learned intermediary doctrine is outdated and inconsistent with Arizona's system of pure comparative fault, and thus should be abolished. Under the learned intermediary doctrine, a prescribing physician could be made to bear all of the responsibility when a consumer is given an inadequate warning about a drug, despite the fact that a manufacturer played some role in the insufficiency of the warning. And the learned intermediary doctrine precludes complete assessment of comparative fault among tortfeasors because it preemptively limits the scope of a manufacturer's duty. Therefore, in the context of prescription pharmaceuticals, the learned intermediary doctrine conflicts with Arizona's Uniform Contribution Among Tortfeasor's Act, and State Farm Ins. Co. v. Premier Manufactured Sys., Inc., 217 Ariz. 222, 172 P.3d 410 (2007), where the Arizona Supreme Court explained that the UCATA's effect was to prevent a partially responsible defendant from being held liable for the damages caused by a co-defendant. Although a patient must first receive a prescription from a "learned intermediary" to obtain prescription drugs, physicians are no longer consumers' sole source of information about the effects, benefits, and risks of medication. Drug manufacturers are increasingly directly marketing/advertising their products to consumers. Likewise, consumers have access to third-party and manufacturer-provided pharmaceutical product information on the internet and medical databases. Accordingly, a manufacturer should not be protected from liability because it adequately warned a third party. Rather, the factfinder should examine the actions of all those in the chain of distribution. Abolishing the learned intermediary doctrine allows a fair allocation of fault under the UCATA and allows a consumer to recover in accordance with each defendant's percentage of fault. Based on Plaintiff's allegations that she relied on Medicis' information (failing to disclose the risks) in choosing to take Solodyn at her doctor's recommendation, questions of fact existed on whether Medicis adequately warned Plaintiff about the risks of Solodyn and whether the alleged inadequacy contributed to her injuries.

Because the court vacated the dismissal, it also reversed the dismissal of Plaintiff's punitive damage claim for more factual development.