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The New Jersey Supreme Court's Latest Decision Affecting Pharmaceutical Multicounty Litigation

Article By:

Martin P. Schrama

Stefanie Colella-Walsh

On October 3, 2018, the New Jersey Supreme Court made its long-awaited decision in the Accutane Multicounty Litigation. Developed by the New Jersey-based pharmaceutical giant Hoffman-La Roche, Accutane is a prescription acne treatment that has been found to be linked to inflammatory bowel disease.

Numerous plaintiffs filed lawsuits in New Jersey, essentially claiming that, based upon the drug maker's own internal documents, Accutane's warnings should have been stronger in stating that Accutane has been found to directly cause inflammatory bowel disease. A Multicounty Litigation was formed, which encompassed 532 plaintiffs – of which 18 were New Jersey residents, and 514 were residents of 44 different jurisdictions other than New Jersey.

In 2015, the trial court basically ruled that NJ's Product Liability Act governed all of the cases in the Multicounty Litigation. Unlike the law in most other states, New Jersey's Product Liability Act contains a rebuttable presumption that basically holds that a drug maker's warning is adequate if it was approved by the United States Food and Drug Administration. The presumption can only be overcome if the plaintiffs show deliberate nondisclosure to the Food and Drug Administration, economically driven manipulation of the regulatory process, or clear and convincing evidence that the drug maker knew or should have known of the inadequacy of the warnings in light of the relevant federal regulations. Having found that the presumption applies to all of the cases, the trial court then held that the plaintiffs could not overcome the presumption and dismissed the cases.

That decision was appealed and the Appellate Division found that New Jersey's Product Liability Act did not govern all of the cases, and that each case was governed by the respective laws of the jurisdictions where the plaintiff used Accutane. The Appellate Division analyzed the many different legal standards and found that the cases from the vast majority of the jurisdictions involved (including New Jersey), should not be summarily dismissed based on the federal approval presumption.

The matter was then taken up by the Supreme Court, which held that New Jersey has an interest in consistent, fair, and reliable outcomes in its consolidated Multicounty Litigation cases that cannot be achieved by applying a "diverse quilt of laws." Having found that all of cases in the Multicounty

Litigation were governed by New Jersey's Product Liability Act, the Supreme Court went on to hold that the plaintiffs had not overcome Act's rebuttable presumption and that the drug maker's approved warnings were adequate as a matter of law. Accordingly, the Supreme Court dismissed all 532 cases.

The ramifications of the Supreme Court's holding are still unclear. A recent, palpable lull in New Jersey Multicounty Litigation applications and filings was followed by changes on the bench through judicial retirements and promotions. Thereafter, there was a relative flurry of designations of Multicounty Litigations for Abilify, Taxotere, Zostavax and Physiomesh, all in the late spring and summer of 2018. No doubt, this Supreme Court ruling will serve to shape the procedural structure and legal strategy of the parties in all pending and contemplated pharmaceutical Multicounty Litigations in New Jersey.

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