Case Reporter

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Summary Judgment/Appellate Practice.

On appeal, a lower court summary judgment in favor of the defendant is affirmed in a product liability case involving an over-the-counter medication made with the compound Ephedrine.

Unanimous Jury Verdict.

A unanimous jury verdict is returned in favor of the defendant in a lengthy medical malpractice trial.

Trial or Mediation.

Following the collapse of the Baltimore Beltway Bridge, a successful mediation brings prompt and satisfactory conclusion to claims against the defendant in a highly visible case avoiding a lengthy and expensive trial.

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Summary Judgment/Appellate Practice.

In a case of first impression, successfully defended by a Harmonie member firm, the Louisiana Second Circuit Court of Appeal affirmed summary judgment in favor of a manufacturer of an Ephedrine compound in a products liability case brought by an abuser of the over-the-counter medication. Green v. BDI Pharmaceuticals, Division of Body Dynamics, Inc., no. 35,291 (La. App. 2nd Cir. 10/31/01) __ So. 2d ____ . Plaintiff Anthony Green sought to recover under Louisiana products liability law for damages caused by his alleged long term addiction to "Mini-Thins," an over-the-counter asthma medication containing the active ingredient Ephedrine HCL.The plaintiff asserted two theories in support of his claim that the product is unreasonably dangerous: (1) that the product is unreasonably dangerous in design, and (2) that its labeling failed to warn of possible addiction. Mr. Green did not claim improper manufacture, or that the product did not conform to express warranties - the only two other possible bases of recovery under Louisiana's reformed products liability law.

In a well considered opinion, the court of appeals affirmed summary judgment in favor of the manufacturer, dismissing Mr. Green's product liability claims.

The court of appeals rejected plaintiff's failure-to-warn claims on the basis that they are preempted by federal law. Specifically citing 21 U.S.C. section 379r, "National Uniformity for Nonprescription Drugs," the court found that Congress intended to preempt any state laws, such as Louisiana's product liability laws, which would impose on manufacturers of non-prescription drugs additional and more burdensome labeling requirements than those established by FDA regulations. Because the manufacturer complied with all labeling requirements established by FDA regulations, including all applicable product warnings, the court rejected plaintiff's failure-to-warn claim.

The court also rejected Mr. Green's claim that Mini-Thins are unreasonably dangerous in design. Under Louisiana law, a design defect claimant such as Mr. Green must prove that there is a functional alternative design for the product that would have prevented his injuries. The defense asserted that there was no alternative design, and the court rejected Mr. Green's claim when he failed to present any evidence thereof.

As a final riposte, the court noted that Mr. Green never used the product for its intended purpose, that is, as an asthma medication. Instead, Mr. Green alleged that he became addicted to Mini-Thins by taking large quantities for extra energy. The court rejected his contention that this was a "reasonably anticipated use" of the product.

The case was successfully defended by James Sutterfield and Gordon Serou of New Orleans member firm Sutterfield & Webb, LLC, who may be contacted at 888/844-0400 for further information.

Unanimous Jury Verdict.

In a medical malpractice case, successfully defended by a Harmonie member firm, the jury returned a unanimous verdict for the defendant in a case brought by patient claiming $442,060 in lost past and future earnings, full medical expense reimbursement, $1,616,341 in future medical expenses, $93,243 in lost household services, and additional unspecified compensatory damages. McGowan v. Leonetti et al. (CV 97-18181). Plaintiff alleged he was totally disabled following an accident as a carpenter when a wall he was helping to lift became unstable and caused the Plaintiff to fall back injuring his back and left foot/ankle. Following initial treatment, Plaintiff was referred to Defendant, a podiatrist, who following evaluation and diagnosis, performed arthroscopic surgery removing bone chips in the left foot causing cartilage and other damage. Over the ensuing five years, Plaintiff was treated by an extensive list of medical care providers on numerous occasions.

Following Plaintiff's worker's compensation claim and Social Security Disability claim, Plaintiff filed suit against Defendant arguing the bone chips were old and did not need to be removed. Plaintiff further alleged he only agreed to the surgery as part of a "conspiracy" with the Defendant to get worker's compensation to pay for it. Plaintiff further alleged as a result of the unnecessary surgery, he developed RSD (Reflex Sympathetic Dystrophy) a painful neurological condition.

At trial, Plaintiff's first expert testified that conservative care should have been initiated prior to deciding on surgery. However, Defendant's counsel was able to elicit testimony that Plaintiff's expert could not conclude the arthroscopic surgery would not have been needed anyway, that RSD was a recognized complication, that informed consent was received, and that all post-operative treatment was within the standard of care. Plaintiff's additional experts testified he had developed RSD, was not malingering, that RSD and associated limp aggravated his pre-existing back condition, and was thus totally disabled.

Defendant's counsel introduced experts that were able to testify to the satisfaction of the jury that the treatment and care was reasonable, that the surgery decision was supported by the medical literature, that the Plaintiff's expert was not qualified to testify on this subject, that his qualifications to testify as a expert witness involved numerous misrepresentations, that the symptoms Plaintiff claims from RSD are actually inconsistent with the medical condition, that RSD is treatable, and that the Plaintiff was an overt malingerer addicted to pain medications.

Following a four and a half week trial, and just 3 hours of deliberation, the jury returned a unanimous verdict for the defendant.

The case was successfully defended by George Mitchell and Mary G. Pryor of the Phoenix member firm The Cavanagh Law Firm, who may be contacted at 602-322-4000 for further information.

Trial or Mediation.

Going to trial is considered by many to be a last resort when parties to a dispute can not agree on how to resolve their differences. Avoidance of trial is not always practical, but in many cases other forms of dispute resolution are available. This case involves a mediation; a common form of alternative dispute resolution (ADR). Mediation has a number of potential benefits that the parties to a dispute must weigh against the cost, time, uncertainty, and emotional drain of a full fledged trial.

Mediation, if proper for the case, can save legal expense, time, remove uncertainty, eliminate the stress on potential witnesses, let the parties exercise some degree of control over the outcome of their case, and at times, show their acceptance of responsibility in resolving matters quickly and efficiently in highly visible and public cases.

Such was the case of the Beltway Bridge Collapse case. This case was successfully mediated by a Harmonie member firm. On June 8, 1999, a truck owned and operated by a Canadian trucking firm was traveling the "Beltway", an interstate highway ring surrounding Baltimore, Maryland. The Beltway is the main thoroughfare bypass for commercial vehicles avoiding the central city. At the height of rush hour traffic, the Canadian truck, hauling a large piece of construction equipment, struck a pedestrian overpass. The accident caused severe traffic problems for several hours, and was covered significantly on local and national news programs, and on national morning news shows.

Claims were advanced on behalf of the victims against the trucking firm and the insurance carrier selected the Baltimore firm of Fedder and Garten to handle the claims. What ensued was an efficient and fair settlement of the claims arrived at through the use of pretrial mediation. Prior to litigation and the extensive and expensive discovery necessary to go forward with trial, the parties agreed to attempt to mediate their claims. A mediator was agreed upon and the process was commenced. Within a year of the accident, all claims related to the accident were resolved. The case was written up as an efficient example of mediation and a forerunner of future resolution methods in settling complex litigation claims.

The defendant trucking firm and carrier were able to resolve their responsibility toward the victims in a satisfactory fashion in a highly visible public case, the claims were settled well within the policy limits of coverage, the legal expense of a trial was eliminated, the uncertainty of the outcome was removed, the emotional stress of a lengthy trial was avoided, and all parties to the case were well satisfied with the resolution.

The carrier and trucking firm were successfully represented by Brian Goodman of the Baltimore, Maryland firm of Fedder and Garten, P.A., who may be contacted at 410-539-2800 for further information.

For additional information about

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