

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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DANIEL SWOVERLAND	:	No. 3:10cv-914 (SRU)
	:	915 Lafayette Boulevard
vs.	:	Bridgeport, Connecticut
	:	
	:	October 5, 2011
GLAXOSMITHKLINE, ET AL	:	

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JUDGE'S RULING

B E F O R E:

THE HONORABLE STEFAN R. UNDERHILL, U. S. D. J.

A P P E A R A N C E S:

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1 THE COURT: All right. I'm going to go ahead
2 and rule on the motions for summary judgment at this time.
3 The court is required, when ruling on the motions for
4 summary judgment, to look at the record facts in the light
5 most favorable to the nonmoving party -- here, that's the
6 plaintiff -- draw all reasonable inferences in favor of
7 that party, and decide whether any reasonable fact finder
8 looking at the evidence in that light could rule in favor
9 of the nonmoving party.

10 The ultimate decision is whether there is an
11 issue, genuine issue of material fact to be tried by the
12 fact finder or whether, instead, there are no genuine
13 issues of material fact and one party is entitled to
14 judgment as a matter of law.

15 Looking at the evidence in the record in the
16 light most favorable to the plaintiff still does not
17 permit a reasonable fact finder to rule in favor of the
18 plaintiff. Here, there is a complete lack of evidence to
19 allow a reasonable jury to rule for the plaintiff and,
20 accordingly, the defendants are entitled to judgment as a
21 matter of law essentially for the following reasons:

22 This is a claim under the Connecticut Product
23 Liability Act, and to prove such claim, the plaintiff has
24 to prove that the defendant was engaged in the business of
25 selling product, that the product was in a defective

1 condition unreasonably dangerous to the consumer or user,
2 the defect caused the injury for which compensation was
3 sought, and the defect existed at the time of sale and the
4 product was expected to and did reach the consumer without
5 substantial change in condition.

6 There are a class of unavoidably unsafe products
7 as to which manufacturers can avoid strict liability if
8 the product is properly prepared and accompanied by proper
9 directions and warnings, and prescription drugs are
10 perhaps the classic unavoidably unsafe product.

11 So, the question really here is whether the
12 warnings that were provided in connection with the
13 distribution and sale of these prescription medications
14 were adequate or not. That's fundamentally the PLA issue
15 here.

16 Connecticut has adopted what's called the
17 Learned Intermediary Doctrine in the case of Vitanza v.
18 Upjohn, 257 Conn 365. That doctrine essentially holds
19 that because there is, or when there is a traditional
20 physician/patient relationship, because the physician is
21 the decision-maker as to whether a particular drug will be
22 used by the ultimate consumer, it is the adequacy of the
23 warnings to the physician that matter. And here, provided
24 that the warnings to Dr. Erol were adequate, the
25 manufacturers of the drugs can, under the Learned

1 Intermediary Doctrine, avoid liability under the PLA.

2 So there really are three issues: Whether the
3 Learned Intermediary Doctrine applies or whether there's
4 some exception to that doctrine; whether the warnings
5 provided were adequate, or; whether there's a causal link
6 between any inadequacy and the harm claimed by the
7 plaintiff.

8 First off, the plaintiff claims that there are
9 two exceptions to the Learned Intermediary Doctrine that
10 apply in this case. First, that the drug was, these drugs
11 were directly advertised to the consumer and, second, that
12 they were over-promoted by the manufacturers.

13 I would note initially that the Connecticut
14 Supreme Court has not adopted any exceptions to the
15 Learned Intermediary Doctrine. Although the court in
16 Vitanza acknowledged that there, that other courts had, in
17 fact, adopted certain exceptions and that the law could
18 change over time, the court declined to adopt any
19 exceptions and, therefore, we don't have any clear
20 indication from the Connecticut Supreme Court that any of
21 these exceptions, potentially exceptions, are available
22 under Connecticut law.

23 Even assuming that they are potentially
24 available, this is not a case in which those exceptions
25 should be acknowledged, because this is a case that falls

1 clearly within the general and appropriate scope of the
2 Learned Intermediary Doctrine. There was, in fact, as the
3 record is clear, there was, in fact, a traditional
4 physician/patient relationship. The doctor did receive
5 and was aware of the warnings that were provided, and the
6 doctor has testified that he essentially followed, used
7 his professional judgment to follow those warnings when
8 counseling the plaintiff how to use the drugs at issue.

9 This is not a case in which the ultimate
10 consumer of the drug went to a doctor requesting a
11 medication but, rather, the plaintiff went to his doctor
12 with certain medical issues and the doctor, exercising
13 professional judgment, selected the drugs with knowledge
14 of their potentially positive affects as well as their
15 potential negative side effects.

16 So, I'm not going to acknowledge either the
17 proposed exceptions under the circumstances of this case.
18 I don't believe that the Connecticut Supreme Court has
19 held that that's appropriate and certainly the facts of
20 this case do not suggest that they should be acknowledged
21 or applied here, even if they are potentially available
22 under Connecticut law.

23 The warnings that were provided to Dr. Erol in
24 my view were adequate. The suggestion that the FDA letter
25 raised a new or higher risk that was not adequately

1 disclosed or warned against in the past, I think is
2 incorrect as a matter of law. The FDA letter did not
3 raise a risk for someone like Mr. Swoverland who was older
4 than the 18 to 24 age group. The warnings that were
5 provided with these drugs were, in fact, adequate.
6 They've been quoted at length in the briefs and the
7 matters about which the plaintiff complains were all, in
8 fact, adequately warned against in the materials available
9 to and relied upon by Dr. Erol, the increased risk of
10 suicidality, the risk of use with alcohol, the need to
11 avoid the operation of equipment, including automobiles.
12 Really, any potentially harm to the plaintiff under the
13 facts of this case were adequately disclosed and warned
14 against in the product warnings that were provided along
15 with the products to the doctor and in direct
16 communications to the doctor.

17 There's nothing to indicate that, even after the
18 fact, Dr. Erol would have done anything differently. He
19 was aware of each of the risks I've already identified.
20 He was also aware obviously that the plaintiff was
21 potentially mixing the drugs at issue and there's nothing
22 to suggest that the warnings he had about the propensities
23 of these medications were in any way inadequate. Rather,
24 being aware of these warnings, he nevertheless exercised
25 professional judgment and prescribed them to

1 Mr. Swoverland.

2 In any event, I think there is a break in the
3 causal chain here. Assuming that I'm incorrect about the
4 adequacy of the warnings, there does not seem to be any
5 facts in the record that would support the suggestion that
6 there was a causal link between the lack of warnings
7 complained of and the harm that befell the plaintiff.

8 As I noted earlier, Dr. Erol indicated that
9 knowing what he knows now, he would not change any of the
10 medical advice or prescriptions that he gave to the
11 plaintiff and, accordingly, there has not been any
12 identification of any inadequacy in a warning that led to
13 an adverse result for the plaintiff. So, that causal
14 link, it seems to me, is subsequently broken.

15 The ruling that I've just been given has been
16 stated as a general matter with respect to both defendants
17 and both the drugs at issue, and I think that's
18 appropriate because essentially, although there are some
19 minor differences here, essentially the legal analysis and
20 the fact, the material facts are the same with respect to
21 both of the drugs in terms of the adequacy of the
22 warnings, the lack of causation and so forth.

23 I do not intend to issue a written decision in
24 this case but I would be happy at this time to clarify or
25 further articulate if any counsel would like me to do so.

1 MR. RUSKIN: No, Your Honor.

2 MR. WATSON: No, Your Honor.

3 MR. DRAKE: No, Your Honor. Thank you.

4 THE COURT: All right. Thank you all. We'll
5 stand in recess.

6 (Whereupon the above matter was adjourned at
7 12:05 o'clock, p. m.)

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C E R T I F I C A T E

I, Susan E. Catucci, RMR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/S/ Susan E. Catucci

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