Products Liability Law Daily Wrap Up, DESIGN AND MANUFACTURING DEFECTS—DRUGS—E.D. La.: Claims that diabetes drug caused user's kidney damage dismissed, (Feb. 18, 2016)

Products Liability Law Daily Wrap Up

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By John W. Scanlan, J.D.

Claims brought by a consumer who sustained permanent kidney injuries after taking diabetes medication for six months were dismissed by a federal court in Louisiana. However, she was given 14 days to amend her complaint to allege facts sufficient to cure the defects in her claims brought under the state products liability act (*Guidry v. Janssen Pharmaceuticals, Inc.*, February 17, 2016, Feldman, M.).

In 2013, the consumer took Invokana, part of a new class of drugs called sodium-glucose co-transporter 2 (SGLT2) inhibitors, which is designed to block the reabsorption of glucose by the kidney, increasing glucose excretion, and lowering blood glucose levels. Six months later, she was hospitalized with ketoacidosis, acute kidney injury, and acute renal failure. In 2015, the FDA issued a safety announcement stating that SGLT2 inhibitors may lead to ketoacidosis. She filed suit against Janssen Pharmaceuticals, Inc., Janssen Research & Development, LLC, Johnson & Johnson Services, Inc., Johnson & Johnson Company, Mitsubishi Tanabe Pharma Corporation, and Mitsubishi Tanabe Pharma Development America, Inc., alleging ten causes of action under the Louisiana Products Liability Act, common law claims, and state unfair trade practice law violations. The companies moved to dismiss, stating that her non-LPLA claims were barred by the exclusivity provision of the LPLA, and that her LPLA claims were not adequately pleaded.

LPLA exclusivity. Claims for negligence, strict product liability, breach of implied warranty, negligent misrepresentation, fraud and deceit, and violations of the state unfair trade practices act were dismissed because the LPLA provides the exclusive theories of liability against manufacturers for damage caused by their products. The consumer argued that New Jersey law applied to her claims because the manufacturer's home state was New Jersey, and that state does not have the same type of exclusivity provision. However, the consumer was a resident of Louisiana, and presumably the drug was acquired in Louisiana and the injury took place there. This was not the type of "exceptional" case in which New Jersey law would be seriously impaired by the application of Louisiana law; in fact, the court found the opposite to be true. Therefore, because Louisiana law applied, the non-LPLA claims were dismissed.

LPLA claims. The court also dismissed all of the claims brought under the LPLA. The defective composition or construction claim was dismissed because none of the specific facts alleged suggested that the medication deviated from the specifications or intended design and she did not allege how its composition was defective. Her defective design claim failed because she merely recited the elements of such a claim and did not plead how the medication's design was defective, how the alleged defect caused her injuries, and how the manufacturer could have remedied the defect. Regarding her inadequate warning claim, her allegations that Invokana causes acute kidney injury, acute renal failure, and ketoacidosis were merely conclusory and she did not allege how the pharmaceutical companies failed to use reasonable care to provide an adequate warning. While the FDA did issue a safety announcement that SGLT2 inhibitors like Invokana may lead to ketoacidosis, she did not allege in her complaint that she ever suffered from this condition. Her express warranty claim was speculative because she did not allege facts suggesting that she was ever informed of the alleged express warranty that the drug was safe to use without blood monitoring and dose adjustments or that it induced her to use Invokana, or that her injury was caused by a lack of blood monitoring or dose adjustments. Finally, her redhibition claim was dismissed because she failed to allege facts sufficient to plausibly recognize any particular defect in Invokana.

The case is No. 15-4591.

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Companies: Janssen Pharmaceuticals, Inc.; Janssen Ortho, LLC; Janssen Research & Development LLC

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