Health Law Daily Wrap Up, PRODUCTS LIABILITY (DRUGS)—S.D.W. Va.: Manufacturer not liable for drug it didn’t produce, (Jun. 29, 2015)

Health Law Daily Wrap Up

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By Kayla R. Bryant, J.D.

A drug manufacturer was granted summary judgment because it did not manufacture the drug that caused the patient’s injuries. The U.S. District Court for the Southern District of West Virginia dismissed Kimmy McNair’s case against Johnson & Johnson (J&J) over injuries suffered after taking Levaquin®, an antibiotic. A patient may not sue the name brand manufacturer for injuries suffered after taking a generic drug produced by a different manufacturer (McNair v. Johnson & Johnson, June 26, 2015, Copenhaver, J.).

Facts. McNair was prescribed Levaquin in March 2012 after being diagnosed with pneumonia. One week later, she was taken to the hospital and diagnosed with acute respiratory distress syndrome (ARDS), in which the lungs and bloodstream do not receive enough oxygen. According to the complaint, McNair has severe pulmonary impairment that doctors believe is permanent, organ system failure, a severed tendon, and chronic foot pain. The complaint asserts that Levaquin was designed and manufactured in a negligent manner. The patent for Levaquin, also known by its generic name levofloxacin, was licensed to a pharmaceutical company whose assets were transferred to a J&J subsidiary.

Generic prescription. Following discovery, J&J’s motion for summary judgment maintained that McNair did not take Levaquin. According to the interrogatories, McNair’s husband had received a prescription for Levaquin prior to McNair’s pneumonia diagnosis, and McNair was instructed to take the remaining Levaquin left over from her husband’s prescription. McNair’s husband’s patient history report from the pharmacy showed that he received levofloxacin with an identification number showing that it was produced by Dr. Reddy’s Laboratories, Limited. McNair argued that even if she ingested the generic version, J&J was liable because generic manufacturers use the initial design and warnings of the name brand version, which J&J created for Levaquin. However, case law in many states establishes that a name brand manufacturer cannot be held liable for injuries caused by the generic version. The court noted that recovery under West Virginia product liability law requires a showing that “a product was defective when it left the manufacturer and the defective product was the proximate cause of the plaintiff’s injuries.” J&J could not be held liable because the proximate cause requirement was not met. Similarly, the breach of warranty claims could not survive because J&J was not the seller of the drugs.

The case is Civil Action No. 2:14-17463.


Companies: Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Dr. Reddy’s Laboratories, Limited; Ortho-McNeil Pharmaceutical, Inc.