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Tennessee Court Urged To Uphold The Learned Intermediary Doctrine

(Jones v. Abbott Laboratories)

The Washington Legal Foundation (WLF) today urged the Supreme Court of Tennessee to uphold the “learned intermediary doctrine,” which limits the liability of pharmaceutical companies in product liability lawsuits.

In a brief filed in *Jones v. Abbott Laboratories*, WLF noted that the doctrine has been upheld by 48 of the 49 states in which courts have addressed it (including Tennessee), and it urged the Tennessee Supreme Court to adhere to the doctrine. The learned intermediary doctrine holds that a product manufacturer has no duty to provide safety warnings directly to consumers, so long as the manufacturer has supplied warnings to an appropriate intermediary who can be expected to pass warnings directly on to consumers. In the case of prescription drugs, the learned intermediary rule provides that drug manufacturers fulfill their duty to warn by providing complete warnings to the prescribing physicians.

In this case, the U.S. District Court for the Western District of Tennessee, which is hearing a failure-to-warn suit against a drug manufacturer, sent two certified questions to the Tennessee Supreme Court, asking whether Tennessee recognizes any exceptions to the doctrine. Noting the large increase in direct-to-consumer (DTC) advertising of pharmaceutical products in the 20 years since the Tennessee courts first recognized the learned intermediary doctrine, the district court asked whether Tennessee deems the doctrine inapplicable whenever a manufacturer’s promotion of its product includes DTC advertising. The case before the district court involves Humira, a drug that its manufacturer, Abbott Labs, promotes through DTC advertising. The patient alleges that she developed lymphoma after being prescribed Humira to treat her severe rheumatoid arthritis. Although her doctor was aware that lymphoma is among the potential (albeit very uncommon) risks of Humira, she alleges that Abbott breached its duty of care by failing to provide warnings directly to her.

“Patients can receive prescription drugs only with the permission of a doctor; accordingly, it makes sense that they should receive warnings regarding potential safety issues from their own doctors, who are best acquainted with their patients’ medical needs,” said WLF Chief Counsel Richard Samp after filing WLF’s brief. “If drug companies are required to begin providing warnings directly to consumers, the result will be an undermining of the doctor-patient relationship; and often it will not even be possible for drug companies to identify and contact the users of their drugs,” Samp said.

WLF’s brief urged the Tennessee Supreme Court, if it chooses to respond to the certified questions, to reject the plaintiffs’ request that the Court abolish the learned intermediary doctrine

entirely. WLF stated that, contrary to the plaintiffs' assertion, there is no nationwide trend against acceptance of the doctrine. WLF noted that only West Virginia has rejected the doctrine and that only New Jersey has created a DTC advertising exception. It also noted that just last year the Texas Supreme Court issued a detailed opinion that ringingly endorsed the doctrine without exceptions.

WLF's brief argued that the doctrine serves important functions and that doctors are in by far the best position to provide all appropriate warnings. WLF noted that the learned intermediary doctrine does not absolve manufacturers of all responsibilities; they can still be held liable for any injuries caused by their failure to provide an adequate warning to doctors.

WLF also urged the Tennessee Court not to create an exception to the learned intermediary doctrine for manufacturers who engage in direct-to-consumer advertising. WLF pointed out that virtually all prescription drug makers engage in some DTC advertising, so that the plaintiffs' proposed "exception" would likely swallow the rule. WLF also argued that the exception makes little sense, given that DTC advertising has never been intended to displace the doctor-patient relationship and the pivotal role of doctors in advising their patients regarding appropriate medications. Moreover, WLF asserted, the DTC advertising exception espoused by the plaintiffs is not actually applicable in the case before the district court, because the patient neither read nor relied on any of the DTC advertisements issued by Abbott Labs.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. In particular, WLF has appeared in numerous federal and state courts in cases raising tort reform issues.

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.