
Hughes Hubbard & Reed

Hughes Hubbard Helps Pfizer Derail Fen-Phen Suit

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One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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Hughes Hubbard & Reed delivered a victory to Pfizer and Wyeth Pharmaceuticals when a district judge blocked a member of a nationwide fen-phen class action settlement from pursuing product liability claims against the drugmakers in Pennsylvania state court.

On April 2, U.S. District Judge Harvey Bartle III in Philadelphia ruled that Linda Milo could not proceed with her lawsuit because she did not provide reliable evidence to win the right to sue over the restrictions of the settlement.

Milo was a member of a nationwide class-action settlement reached in 2000 as part of federal multidistrict fen-phen litigation that largely prohibited class members from suing Wyeth for all diet drug-related injuries.

One exception allows class members to sue Wyeth if they can demonstrate that they developed primary pulmonary hypertension (PPH), abnormally high blood pressure in the arteries of the lungs that can lead to heart disease and failure, through the use of diet drugs. Under the settlement agreement, to qualify for the PPH exception, a class member must produce cardiac catheterization tests showing both a mean pulmonary artery pressure of greater than 25 mmHg and a pulmonary artery wedge pressure of less than 15 mmHg.

Milo argued that, while she had no test that cleared that second hurdle, a test in 2007 still qualified for the exception because her doctor reported another measurement – left ventricular end-diastolic pressure (LVEDP) at 15 mmHg.

But Judge Bartle agreed with Hughes Hubbard that Milo could not substitute one measurement for another to satisfy her burden. “In sum, plaintiff has failed as a threshold matter to meet the requirements...of the settlement agreement,” Judge Bartle wrote in his opinion.

Ted Mayer, Robb Patryk, Eric Blumenfeld, Carole Nimaroff, Kevin Braker, John Turrettini and Christina Migally represented Pfizer.

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Theodore V.H. Mayer



Robb W. Patryk



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