Hughes Hubbard & Reed

First Circuit Victory Secured for Pfizer in Diet Drug Case

News & Events | Deals & Matters

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

Hughes Hubbard & Reed led Pfizer and Wyeth Pharmaceuticals to a decisive victory when the First Circuit Court of Appeals upheld a jury verdict against a man who claimed he developed a potentially fatal lung condition from Wyeth's diet drug Pondimin.

On March 23, 2016, a First Circuit panel of three judges, which included retired U.S. Supreme Court Justice David Souter, ruled that a district judge properly dismissed Michael Tersigni's negligent design claim because he failed to present evidence of a reasonable alternative design. The panel also ruled that the jury was not prejudiced by hearing evidence of Tersigni's prior incarceration and past cocaine use.

Tersigni sued Wyeth in March 2011, alleging that he developed primary pulmonary hypertension, an often-fatal lung disease, after using Pondimin for six months in 1997. Hughes Hubbard assumed control of the defense of the diet drug litigation in 2012. Before the Tersigni trial began, a district judge granted Wyeth's motion for summary judgment on most of Tersigni's claims, including his negligent design claim, which alleged that Wyeth knew, or should have known, that Pondimin was unreasonably dangerous and continued to market it. The district judge held that Massachusetts courts would not recognize a cause of action for the negligent design of a prescription drug.

In August 2014, the firm won a jury verdict after a two-week trial in Boston on Tersigni's remaining claim. The jury concluded that Wyeth had not negligently failed to warn Tersigni's prescribing physician of the medical risks posed by Pondimin.

Tersigni argued on appeal that the district judge improperly dismissed his negligent design claim and that the jury was biased by evidence Wyeth presented that he had once been incarcerated and that he had occasionally used cocaine, potentially contributing to his health problems.

On Aug. 24, Hughes Hubbard successfully blocked Tersigni's move to take his negligent design claim to the highest state court in Massachusetts, but Tersigni was allowed to raise the argument again in his merits brief.

On March 23, in affirming the district judge's dismissal of Tersigni's negligent design claim, the First Circuit panel agreed with Hughes Hubbard that Massachusetts courts have recognized that claim against other products but never against a prescription drug. Although the panel acknowledged the possibility that Massachusetts courts might recognize his claim, it concluded it need not decide what they would do "because even if we were to assume that such a claim is cognizable under Massachusetts law, the claim would nonetheless fail based on Tersigni's inability to proffer evidence of a reasonable alternative design."

The First Circuit panel also accepted Hughes Hubbard's argument that his request to have his claim considered by the highest court of Massachusetts was untimely because he chose to file his case in federal court and go to trial without requesting that the state court consider his novel legal theory.

The panel also rejected Tersigni's arguments on the admission of evidence. "We need not decide whether the district court abused its discretion by admitting this evidence because any error—if indeed there was one at all — was harmless," Judge Norman Stahl wrote for the panel.

Ted Mayer argued the appeal. Bill Beausoleil and Andrew Schwenk were the primary drafters of the briefs. George Davidson and Will Coronato assisted in preparing for argument. Coronato was first chair at trial, working with a team that included Christina Migally Gabriel and Jonathan Misk. The trial victory was the first ever defense verdict in a fen-phen primary pulmonary hypertension case in which the jury considered both liability and causation issues simultaneously and was named by Legal Media Group Science Awards as its 2015 Product Liability Impact Case of the Year.

Related People

Theodore V.H. Mayer

William J. Beausoleil

Related Areas of Focus

Appellate
Product Liability
Life Sciences