Loyola Consumer Law Review

Volume 8 | Issue 3 Article 2

1996

Consumer News

Charles R. Whitt

CONSUMER NEWS

by Charles R. Whitt

Supreme Court opens door for medical-device suits

The United States Supreme Court, in a highly watched products liability case, ruled that consumers injured by allegedly faulty medical devices may seek damages, as set forth under state law, against the manufacturers. The ruling comes notwithstanding defense arguments that the devices comply with federal regulations. The ruling clears the way for numerous suits and potential class action filings against makers of defective medical products. All nine Justices rejected broad claims of federal preemption that were advanced by product producers.

In the case before the Court, *Medtronic v. Lohr*, 116 S.Ct. 806 (1996) plaintiff Lora Lohr's pacemaker, implanted in 1987, failed in 1990. Ms. Lohr filed suit against Medtronic for physical and emotional trauma. The plaintiff sought $1 million in damages and claimed design and manufacturing defect, as well as inadequate safety labeling accompanying the device. The issue before the Court was whether federal safety statutes prohibit or preempt injury suits filed under state law principles. The federal statutes affect several products including automobiles, pesticides, cigarettes, and silicone breasts implants.

The Court focused on a 1976 federal law provided the Food and Drug Administration ("FDA") authority to regulate medical devices. Many federal judges have interpreted the language of these statutes to block medical-device claims.

The Supreme Court, however, decided the 1976 law does not prevent medical-device claims unless the manufacturers are held to a higher standard than one specifically applied by the FDA to the device in question. Justice Stevens, writing for the court, said that under the 1976 law the FDA approved most products in what was a cursory examination that was "substantially equivalent" to models already on the market. The Court concluded that suits concerning products approved in this manner will almost always be allowed.

Even though all nine Justices agreed that the design claim was not preempted because the FDA had not established specific design standards, the justices were split 5 to 4 on whether the manufacturing and labeling claims should go forward. Ms. Lohr's attorneys predicted that the ruling would have very broad applicability to many medical devices currently available.

The decision may help consumers in suits over other products. For example, makers of hazardous pesticides and silicone breast implants can no longer rely on the defense of federal safety statutes barring an injury claim.

Customer files suit against Sprint Corporation

A customer has filed suit against Sprint Corporation ("Sprint") for unspecified damages alleging the company's Dime-A-Minute advertising campaign is deceptive. The lawsuit, filed in the U.S. District Court for the Northern District of California, seeks certification as a class action on behalf of all residential phone customers who have used Sprint since 1986.

The lawsuit contends the advertising leads people to believe a $1\frac{1}{2}$ minute call will cost 15 cents while, in fact, Sprint rounds up the call to the next full minute and charges 20 cents. Robert Mills, the attorney who filed the suit, said that Sprint has the right to round up customer phone bills, but does not "have the right to misrepresent to the public how in fact they are charging Mom and Pop on the Street." The lawsuit also alleges that Sprint knowingly and intentionally deceived its residential telephone service customers. Attorneys for Sprint have not commented publicly on the allegations.

Time Warner-Turner merger approved by FTC

The Federal Trade Commission ("FDA") approved Time Warner Inc.'s ("Time-Warner") purchase of Turner Broadcasting System's, Inc. ("Time-Warner"). However, conditions of the estimated $6.7 billion deal must be met that the FTC recognizes as preserving cable television competition. The FTC was concerned that the combined Time-Warner-Turner would wield too much clout in the cable industry and programming business. As a result, the FTC required the new company's cable-TV system to carry a second news channel to compete with its own Cable News Network ("CNN"). Time-Warner agreed to carry the all-news cable network: MSNBC, a joint venture between Microsoft Corp. and General Electric's NBC, on half of its systems. Projections estimate this competing 24 hour news network will enter into six million homes across the nation.

Additionally, the role of Tele-Communications Inc. ("TCI"), an Englewood Colorado cable operator, was another major concern for regulators. TCI owns 21% of Turner and would own approximately 9% of the merged company. The FTC feared the merger would reduce the incentive for TCI and Time-Warner, the nation's number one and number two cable systems operators, to compete aggressively against each other. Smaller programmers and consumer groups have expressed concern that the merger would ultimately have a devastating effect by limiting viewing time available to independent programs carried on either Time-Warner or TCI cable systems. Under the new agreement, TCI is not permitted to directly hold stock it would otherwise own in the merged Time-Turner company. Instead, those shares will be placed with a new company owned by an TCI affiliate, Liberty Media.

FTC officials said the settlement was designed to keep TCI and Time-Turner at arm's length, so that they won't be able to pool their powerful positions to manipulate the wholesale price of cable programming and the prices charged to subscribers. However, consumer advocate Bradley Stillman, head of telecommunication policy for the Consumer Federation of America, said his organization was disappointed by the merger and wanted the FTC to "take more aggressive action" against the merger.

Illinois court overturns non-economic damages limitation

Cook County Circuit Judge Kenneth Gills overturned a key provision in the Illinois Tort Reform Act of 1995, finding the law's $500,000 cap on non-economic damages violates state constitutional provisions. In *Cargil v. Waste Management, Inc.*, No. 95 L 7867 (Cook County Circuit Court 5/22/96), Judge Gills ruled that the damages limitation violates the constitutional right to trial by jury, the separation-of-powers provision, and the equal protection guarantees. The judge also found that the law violates a state prohibition against legislation which unnecessarily targets narrow constituencies.

In his opinion, Judge Gills contended that "juries have been dealing with [the concept of] 'pain and suffering' and other subjective claims of harm for centuries...why are lost wages unlimited and the loss of a child, through death, limited? I find the distinction irrational." In deciding that the damages measure unlawfully targets plaintiffs in negligence and product liability cases, Gills relied on a prior Illinois Supreme Court decision, *Wright v. Central DuPage Hospital Association*, 63 Ill. 2d 313 (Ill. 1976), which overturned a medical malpractice damages cap as an unconstitutional "special law."

Defense attorneys are expected to appeal the ruling directly to the Illinois Supreme Court, which is permitted under Illinois state law after a trial judge has declared a statute unconstitutional.