

1995

## Fraudulent Scheme Nets Damage and Fees

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### Recommended Citation

Elizabeth Abbene *Fraudulent Scheme Nets Damage and Fees*, 7 Loy. Consumer L. Rev. 77 (1995).

Available at: <http://lawcommons.luc.edu/lclr/vol7/iss2/7>

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# R E C E N T C A S E S

## *Hospital held strictly liable for defective implant*

By Cary R. Latimer

In *Bell v. Poplar Bluff Physicians Group*, 879 S.W.2d 618 (Mo.Ct.App. 1994), the Missouri Court of Appeals held that a hospital may be liable for damages associated with defective surgical implants under strict products liability. The court also held that while the state's two-year statute of limitations for medical malpractice claims applied to negligence claims, it did not control in claims of strict products liability against hospitals.

### Summary judgment

On January 6, 1987, the plaintiff, Jo Ann Bell, received a "temporomandibular interpositional implant" bought from a hospital operated by the defendant. Subsequently, she brought suit in state court against the defendant for the defective surgical

implant based on strict products liability and negligence. The trial court granted summary judgment in favor of the defendant on both claims. Bell then appealed the court's ruling.

On appeal, the defendant contended that the lower court had properly granted summary judgment on both of Bell's claims. Turning first to Count I, the strict products liability claim, the defendant contended that such liability did not apply to a hospital as it was not a seller within meaning intended by Section 402A of the *Restatement (Second) of Torts*. Rather, the defendant argued that the hospital's relationship with Bell was based upon rendering professional medical care. Any sale of a product by the hospital, such as a surgical implant, was an inseparable part of providing professional services.

The Missouri Court of Appeals rejected the defendant's assertions. In its analysis, the court first determined that a strict products liability claim could succeed against a hospital, even though the sale of a product was secondary to rendering medical services to its patients. Second, the court emphasized that such a claim did not require the selling of a product. Rather, liability may attach when the product is placed into the stream of commerce or transferred in the course of business. In reaching this decision, the appellate court reasoned that imposing strict tort liability upon a hospital would clearly protect a public interest in human life and health. Finally, the court held that a Missouri statute which defined products liability claims did not except health care providers or hospitals. Accordingly, it chose not  
*Please see "Hospital liable" on page 80*

## Fraudulent scheme nets damages and fees

By Elizabeth Abbene

In *Bowling v. Ansted Chrysler-Plymouth-Dodge, Inc.*, 425 S.E.2d 144 (W. Va. 1992), the Supreme Court of Appeals of West Virginia held that purchasers of used rental cars, having demonstrated that a car dealership engaged in fraudulent business practices, may recover damages from both the corporate business and its president when the president possesses constructive knowledge of the fraud. Additionally, the purchasers are entitled to reasonable attorney's fees upon a showing of clear and convincing evidence of fraud.

David Akers served as the president and majority shareholder of Ansted Chrysler-Plymouth-Dodge, Inc. ("Ansted"), a West Virginia car dealership. As part of

this business, Akers purchased automobiles at commercial auctions in North Carolina, Ohio, and Pennsylvania. Ninety percent of the vehicles sold at these auctions were used rental cars; the remaining ten percent were leased vehicles, company cars, or new cars that had been damaged in shipment from the factory. After purchase, Akers shipped the automobiles directly to his dealership. Here, the cars were meticulously cleaned, serviced, and stripped of any evidence indicating that they had once been rental cars. The dealership then advertised the cars as "factory cars" or "fresh from the factory sale" cars, selling them at a significantly greater profit margin than that realized from the sales of identical, but new, vehicles.