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Massachusetts Appeals Court Takes Narrow View of "Reasonable Alternative Design" Requirement in Design Defect Claims

In the usual Massachusetts product liability case, defense counsel is confronted with a claim that a client's product was defectively designed and caused an injury to person or property. The injured party must then prove that there was a "safer alternative design" that would have prevented the harm. Unfortunately, a cottage industry has arisen of technical "experts" in a variety of fields who are willing to advance outlandish "alternative designs". The development makes defense efforts more difficult and reduces prospects of disposition of claims short of drawn out and expensive proceedings.

A recent Massachusetts Appeals Court case narrows to a degree what is permitted by way of evidence of a "safer alternative design." In Niedner v. Ortho-McNeil Pharmaceutical, Inc., 90 Mass. App. Ct. 306 (2016) the Court upheld a lower court's having granted summary judgment to the manufacturer of a birth control device, thereby bringing the case to a conclusion well before trial.

The underlying facts were tragic. A teenage girl and her mother consulted the teenager's physician about prescribing a birth control device called a patch. This physician disclosed that one of the risks of the patch was the development of blood clots, and this disclosure was repeated in an insert to the patch's container. Shortly after beginning to use the patch, the teenager developed a blood clot which killed her.

The teenager's estate sued the manufacturer of the patch claiming (among other things) that the "safer alternative design" was a birth control pill, which was less risky than the patch. The manufacturer moved for summary on a number of grounds.

The Appeals Court agreed with the trial judge that the case should be dismissed for several reasons, including the fact that the estate's "safer alternative design" allegation improperly linked the patch with a pill. In particular, the Court pointed out that the patch transmitted medication through the skin while the pill was an oral medicine. The Court concluded, therefore, that the estate had no viable claim against the patch's manufacturer.

The Massachusetts Supreme Judicial Court declined to consider a further appeal, and the case is now closed.

Although this decision was not rendered by the highest court in Massachusetts, it contains helpful lessons for product manufacturers and their attorneys. The first is never to take at face value the claim of a "safer alternative design." Rather, the nature of the claimed "alternative" should be carefully considered from a legal and scientific point of view. Is the "safer alternative design" in fact such a significant change that it no longer constitutes the product at issue? A related issue is whether or not the "safer alternative design" is commercially feasible? Once these questions are addressed, the Niedner opinion may enable a defendant to obtain early resolution of the case.

For further information, contact Conn Kavanaugh partners, Thomas E. Peisch, Russell F. Conn, or Erin K. Higgins.

This client advisory was co-written by ***Thomas E. Peisch and Adam Santeusanio****.*

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