Submission for Friday 5

In *Ideus v. Teva Pharm. USA, Inc.*, 2021 WL 415774 (8th Cir. Feb. 8, 2021), the Eighth Circuit held under Nebraska tort law that a manufacturer need not warn a consumer directly about the potential risks of using its contraceptive device. This decision may have implications beyond applicability to actions in Nebraska because the Eighth Circuit recognized that the majority position in jurisdictions around the country is to apply the learned-intermediary doctrine to failure to warn claims regarding medical devices, including contraceptive devices. Thus, the case may signal broader thinking by the Eighth Circuit in future medical device failure to warn cases.

Plaintiff appealed to the U.S. Circuit Court of Appeals for the Eighth Circuit after the United States District Court for the District of Nebraska applied the learned-intermediary doctrine and granted summary judgment to Defendant on the breach of a duty to warn claim. *Id.* at *1. The learned-intermediary doctrine is a general rule, discharging manufacturers of pharmaceuticals and medical devices of a duty to warn the user of a product by providing sufficient warnings to medical professionals of associated risks of using the product. The parties agreed that Plaintiff's physician was provided with adequate warnings. The device at issue required the physician and patient to participate in implantation; thus, the question remained whether Defendant was obligated to warn Plaintiff directly. *Id.*

Relying heavily on the Nebraska Supreme Court's application of the doctrine to pharmaceuticals, the Eighth Circuit predicted the state supreme court would apply the doctrine similarly to the IUD at issue, holding that the district court correctly granted summary judgment. *Id.* This decision does not overrule, but instead distinguishes this case from *Hill v. Searle Laboratories, a Div. of Searle Pharmaceuticals, Inc.*, 884 F.2d 1064 (8th Cir. 1989), holding that the learned-intermediary doctrine does not apply to IUD's.

Although *Ideus* was decided under Nebraska law, one promising takeaway that can be applied more broadly is the Eighth Circuit's recognition that the majority consensus is to apply the learned intermediary doctrine to medical devices, like IUD's, because they are "no different from other prescription drugs and medical devices, at least in terms of the level of 'guidance,' 'knowledge,' and 'skill' required of physicians." *Ideus*, 2021 WL 415774 at *2.

By: Beth Bauer and Emilee Bramstedt, HeplerBroom LLC