Pharmaceutical and Medical Device

Published Opinions

Kaiser v. DePuy Spine, Inc., No. 8:12-cv-2596-T35-AEP, 2013 WL 2006122 (M.D. Fla. May 14, 2013) (dismissing claims with prejudice, before discovery, under *Riegel* preemption and *Wolicki-Gables* for failing to specify a parallel claim or allege noncompliance with a formal performance standard established by the FDA).

Layton v. SmithKline Beecham Corp., No. 05-CA-007440, 2012 WL 4983778 (Fla. Cir. Ct. 13th Jud. Cir. Oct. 16, 2012) (an evidentiary hearing is not required to determine entitlement to attorneys' fees and costs based upon a proposal for settlement).

Wolicki-Gables v. Arrow Int'l, Inc., 634 F.3d 1296 (11th Cir. 2011) (affirming summary judgment under *Riegel* preemption and affirming that inference of defect did not apply).

Chapman v. DePuy Orthopaedics, Inc., 760 F. Supp. 2d 1310 (M.D. Fla. 2011) (granting summary judgment for medical device manufacturer based upon choice of law analysis and application of Virginia's statute of limitations).

Gomez v. Pfizer, Inc., No. 09-22700-CIV, 2010 WL 4102922 (S.D. Fla. Oct. 18, 2010) (plaintiff alleging failure to warn claims regarding over-the-counter product must respond to discovery and provide specific warnings language that allegedly should have accompanied product).

Howe v. Wyeth Inc., No. 8:09-CV-610-T-17AEP, 2010 WL 1708857 (M.D. Fla. Apr. 26, 2010) (granting summary judgment for name brand manufacturers when plaintiff used only generic product).

Levine v. Wyeth Inc., 684 F. Supp. 2d 1338 (M.D. Fla. 2010) (granting summary judgment for name brand manufacturers when plaintiff used only generic product).

Doriand v. Centocor Inc., No. 1:09-cv-00078-MP-AK, 2010 WL 325742 (N.D. Fla. Jan. 26, 2010) (rejecting plaintiff's attempt to add a "sharing" provision to a protective order).

Gomez v. Pfizer, Inc., 675 F. Supp. 2d 1159 (S.D. Fla. 2009) (granting motion to dismiss claims of negligence and strict liability under *Iqbal* and *Twombly*).

Dietrich v. Wyeth, Inc., No. 50-2009-CA-021586 XXX MB, 2009 WL 4924722 (Fla. Cir. Ct. 15th Jud. Cir. Dec. 21, 2009) (granting summary judgment for name brand manufacturers when plaintiff used only generic product).

Devore v. Howmedica Osteonics Corp., 658 F. Supp. 2d 1372 (M.D. Fla. 2009) (defendant properly removed based upon plaintiff's discovery responses and fraudulent joinder of alleged product distributor).

Wolicki-Gables v. Arrow Int'l, Inc., 641 F. Supp. 2d 1270 (M.D. Fla. 2009) (granting summary judgment under *Riegel* preemption, learned intermediary doctrine, and failure to present expert proof).

Colville v. Pharmacia & Upjohn Co., 565 F. Supp. 2d 1314 (N.D. Fla. 2008) (granting summary judgment under learned intermediary doctrine, adequacy of warning, and failure to show actionable injury).

Wolicki-Gables v. Arrow Int'l, Inc., No. 8:08-CV-151-T-17MSS, 2008 WL 2773721 (M.D. Fla. June 17, 2008) (granting motion to dismiss claims of strict liability and negligence under *Twombly*).

Beale v. Biomet, Inc., 492 F. Supp. 2d 1360 (S.D. Fla. 2007) (granting summary judgment under learned intermediary doctrine and adequacy of warning, applying doctrine to deceptive advertising claims, and holding that neither the direct-to-consumer nor over-promotion exceptions exists under Florida law).

Chase v. Novartis Pharm. Corp., No. 8:04-cv-885-T-26TBM, 2006 WL 6627827 (M.D. Fla. Sept. 29, 2006) (granting summary judgment under learned intermediary doctrine).

Sharp v. Leichus, No. 2004-CA-0643, 2006 WL 515532 (Fla. Cir. Ct. 2d Jud. Cir. Feb. 17, 2006) (granting summary judgment for name brand manufacturers when plaintiff used only generic product), *aff'd per curiam*, 952 So. 2d 555 (Fla. 1st DCA 2007).

Seminal Cases

Wolicki-Gables v. Arrow Int'l, Inc., 634 F.3d 1296 (11th Cir. 2011) (Eleventh Circuit's first application of Riegel preemption to require specific allegations of parallel claims).

Wolicki-Gables v. Arrow Int'l, Inc., 641 F. Supp. 2d 1270 (M.D. Fla. 2009) (Riegel preemption of PMA-device claims against alleged manufacturer, distributor, and manufacturer's representative).

Colville v. Pharmacia & Upjohn Co., 565 F. Supp. 2d 1314 (N.D. Fla. 2008) (learned-intermediary doctrine applies when prescriber independently assesses risk and decides not to warn plaintiff).

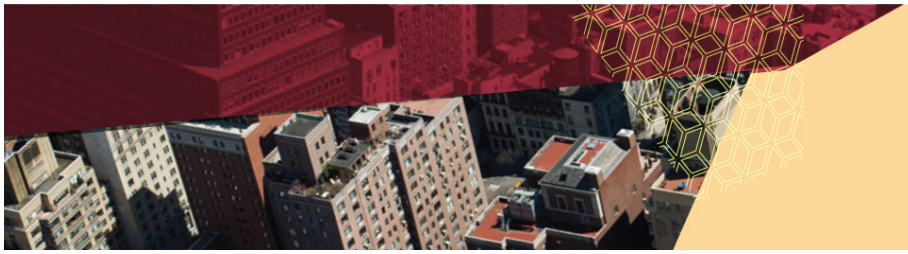
Beale v. Biomet, Inc., 492 F. Supp. 2d 1360 (S.D. Fla. 2007) (learned-intermediary doctrine applies to medical devices and FDUTPA claims, no Florida court recognizes direct-to-consumer or overpromotion exceptions).

Alexander v. Danek Med., Inc., 37 F. Supp. 2d 1346 (M.D. Fla. 1999) (defect requires expert proof).

Savage v. Danek Med., Inc., 31 F. Supp. 2d 980 (M.D. Fla. 1999) (same).

Adams v. G.D. Searle & Co., 576 So. 2d 728 (Fla. 2d DCA 1991) (comment k applied).

Felix v. Hoffmann-LaRoche, Inc., 540 So. 2d 102 (Fla. 1989) (learned-intermediary doctrine adopted as Florida law).



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