

SUMMER 2012 NEWSLETTER

PRODUCTS LIABILITY UPDATE

By Rocky Little

1. *Centocor, Inc. v. Hamilton*, 55 Tex. Sup. J. 774, June 8, 2012.

The product at issue in this case is Remicade, a prescription drug manufactured by Centocor, Inc. Hamilton contends that Remicade has a marketing defect that rendered it unreasonably dangerous. Hamilton alleged that the marketing defect was an inadequate warning, and more specifically an inadequate informational video received from Centocor.

Hamilton suffered from Crohn's disease and sought treatment from Dr. Hauptman, a gastroenterologist. Dr. Hauptman testified that Hamilton's only two treatment options were through steroids or Remicade intravenous infusions. Dr. Hauptman explained the risk and benefits of each approach and Hamilton decided to have the Remicade infusions. Hamilton claimed that Remicade caused her to suffer a serious side effect called Lupus-like syndrome. The Centocor informational video warns of various risks, but did not mention Lupus-like syndrome as a potential side effect. The video also indicates that it should not be used as a substitute for "talking with your doctor."

Under the Learned Intermediary Doctrine, the manufacturer of a pharmaceutical product satisfies its duty to warn the end user of potential risks by providing an adequate warning to a "learned intermediary," who then assumes the duty to pass on the necessary warnings to the end user. The Doctrine applies within the context of a physician/patient relationship and allows a prescription drug manufacturer to fulfill its duty to warn end users of potential risks by providing an adequate warning to the prescribing physician. Hamilton contended that the informational video bypassed the physician/patient relationship and required Centocor to warn them of Remicade's potential risk and side effects. The Texas Supreme Court held that there is no exception to the Learned Intermediary Doctrine for direct-to-consumer advertising.

2. *Fields v. Klatt Hardware & Lumber, Inc.*, No. 04-11-00610-CV (Tex. App. – San Antonio, June 20, 2012).

Fields brought this suit for personal injury based on an allegedly defective product, Masterjack Drain Opener, which she purchased from Klatt Hardware & Lumber located in Orange Grove, Texas. Masterjack is a Colorado corporation that does not have a registered place of business or a designated agent for service of process in Texas. Fields sued Masterjack and Klatt. She obtained personal service on Masterjack's President in Colorado, and also served Masterjack through the Texas Secretary of State in accordance with the long arm statute. Masterjack never answered or appeared. Pursuant to Texas Civil Practice & Remedies Code §82.003, a seller that does not manufacture a product is not liable for harm caused by that product unless the claimant proves liability through at least one of the seven listed methods.

In this case, the allegation pursuant to the statute is that the manufacturer, Masterjack, is not subject to the jurisdiction of the court. Pursuant to Texas Civil Practice & Remedies Code §82.003, (c): if, after service on a non-resident manufacturer through the Secretary of State, the manufacturer fails to answer or otherwise make an appearance, it is conclusively presumed that the manufacturer is not subject to the jurisdiction of the court **unless** the seller is able to secure personal jurisdiction over the manufacturer. In order to secure personal jurisdiction over the manufacturer, the seller must do more than prove service of process on a manufacturer. The seller must also prove that the non-resident manufacturer has established minimum contacts with Texas such that the court's exercise of jurisdiction comports with traditional notions of fair play and substantial justice. In other words, the non-manufacturing seller can secure personal jurisdiction over a non-resident manufacturer when the seller proves that the manufacturer has been properly served under the Texas long arm statute, and that the manufacturer had minimum contacts with Texas sufficient to satisfy federal and state constitutional due process requirements.