

March 29, 2007

Pharmaceutical Product Liability Update: *Rowe v. Hoffmann-La Roche Inc.*

In a milestone decision signaling New Jersey's tempered role in the regulation of its resident pharmaceutical companies, the New Jersey Supreme Court today held that the law of Michigan – not New Jersey – applied to a lawsuit brought by a Michigan resident alleging injuries from a prescription drug manufactured in New Jersey. Covington & Burling briefed and argued the case for the defendants Hoffmann-La Roche Inc. and Roche Laboratories Inc. The decision, *Rowe v. Hoffmann-La Roche Inc.*, No. A-19-06 (N.J. Mar. 29, 2007), is available by clicking [here](#).

In this case, a Michigan plaintiff alleged that he was injured by a prescription drug manufactured in New Jersey, and he sought to evade a Michigan statute that prohibited product-liability suits against manufacturers of FDA-approved prescription drugs. Though prior New Jersey Supreme Court decisions had invoked New Jersey's interest in strictly regulating the conduct of New Jersey manufacturers, in *Rowe* the Court clarified that New Jersey has a diminished interest in the regulation of pharmaceutical companies, whose products are extensively regulated by the FDA. Citing the New Jersey product-liability statute, which restricts liability against manufacturers of FDA-approved prescription medicines, the Court stated that “[t]he predominant object of the law is not to encourage tort recoveries by plaintiffs, whether New Jersey citizens or not, in order to deter this State's drug manufacturers.” Rather, said the Court, the Legislature “limits the liability of manufacturers of FDA-approved products by reducing the burden placed on them by product liability litigation” and has “cede[d] to FDA regulation some of this State's interest in policing local pharmaceutical manufacturers, thereby reducing New Jersey's interest in applying its law to this case.”

More generally, the Court acknowledged that product-liability suits can harm both the economy and public health. In evaluating New Jersey's interest in the lawsuit, the Court observed that the New Jersey “Legislature carefully balanced the need to protect individuals against the need to protect an industry with a significant relationship to [New Jersey's] economy and public health.” And in holding that the lawsuit of a Michigan plaintiff was governed by Michigan law, the Court recognized and deferred to Michigan's “desire to increase access to affordable prescription drugs for Michigan residents.”

The decision could also stem the flow to New Jersey of out-of-state plaintiffs who seek to evade the laws of their home states. The Court noted that “over ninety percent of mass-tort claims against New Jersey pharmaceutical companies in New Jersey courts have been brought by non-New Jersey residents.” In prohibiting the Michigan plaintiff from invoking the law of New Jersey, the court suggested that New Jersey would not be a haven for such plaintiffs: “To allow a life-long Michigan resident who received a FDA-approved drug in Michigan and alleges injuries sustained in Michigan to by-pass his own state's law and obtain compensation for his injuries in this State's courts completely undercuts Michigan's interest, while overvaluing [New Jersey's] true interest in this litigation.”

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