

COURT WATCH UPDATE

FROM THE OFFICES OF FLAHERTY, SENSABAUGH & BONASSO, PLLC.

January 16, 2007

State ex rel. Johnson & Johnson, Corp. & Janssen Pharmaceutica, Inc. v. Karl

Appeal No. 062498

Appeal from the Circuit Court of Marshall County to the West Virginia Supreme Court of Appeals

TOPIC: Whether the trial court should or should not apply the learned intermediary doctrine to a prescription drug and medical malpractice case?

On December 20, 2007, we provided a full Court Watch summary regarding *State ex. rel Johnson & Johnson*. In briefs recently submitted to the West Virginia Supreme Court of Appeals, the defendant pharmaceutical company argues that the learned-intermediary doctrine should be adopted in West Virginia. The learned-intermediary doctrine is the principle that a prescription-drug manufacturer fulfills its duty to warn of a drug's potentially harmful effects by informing the prescribing physician, rather than the end-user, of those effects.¹ The plaintiff and co-defendant both argue that the learned-intermediary doctrine improperly shifts the duty to warn the patient of potential risks and side-effects from the manufacturer to the physician. The plaintiff and the co-defendant further argue that the pharmaceutical manufacturer should not be relieved of its duty to warn consumers of the dangers or side effects of its products.

The West Virginia Supreme Court will have to decide whether the trial court should or should not apply the learned-intermediary doctrine to the case. The Supreme Court will hear arguments from each party on January 23, 2006. Court Watch summaries will be provided as the case proceeds.

¹ *Black's Law Dictionary* 898 (7th ed. 1999).