ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

AMANDA WATTS v. MEDICIS PHARMACEUTICAL CORP.
CV-15-0065-PR

PARTIES:

Petitioner/Appellee/Defendant: Medicis Pharmaceutical Corporation

Respondent/Appellant/Plaintiff: Amanda Watts

FACTS:

In April 2008, Watts, a minor at the time, sought medical treatment for chronic acne. Watts's medical provider prescribed Solodyn, a prescription oral antibiotic with active ingredient minocycline. Medicis, an Arizona corporation, manufactures and distributes Solodyn. After receiving a prescription, Watts used Solodyn as prescribed for 20 weeks. When Watts returned to the same medical provider in May 2010, again with concerns about acne, the provider again prescribed Solodyn, and Watts took it as directed for another 20 weeks.

Before using Solodyn, Watts received two informational publications providing details about the drug, neither of which disclosed any link between Solodyn use and the development of autoimmune diseases. The first was a "MediSAVE" card, which her medical provider gave to her, that outlined a discount purchase program for Solodyn. The MediSAVE card and its accompanying information indicated that the safety of using Solodyn for longer than 12 weeks "has not been studied and is not known." Additionally, when she filled the prescription at a local pharmacy, Watts received an informational insert about Solodyn's possible side effects and safety considerations. That insert warned that patients should consult a doctor if symptoms did not improve within 12 weeks.

Watts does not allege that she received either the U.S. Food and Drug Administration ("FDA") approved patient labeling or the full prescribing information for Solodyn that is provided to physicians. The FDA-approved patient labeling states that possible side effects of Solodyn use include joint pain and effects on the liver. Contrary to the MediSAVE card and insert Watts received, the full prescribing information warns specifically that lupus-like syndrome and autoimmune hepatitis are possible results associated with the "long-term" use of minocycline. It also warns, in a section labeled "Patient Counseling Information," that patients should be advised:

> Autoimmune syndromes, including drug-induced lupus-like syndrome, autoimmune hepatitis, vasculitis and serum sickness have been observed with tetracycline-class drugs, including minocycline. Symptoms may be manifested by arthralgia, fever, rash and malaise. Patients who experience such symptoms should be cautioned to stop the drug immediately and seek medical help.

In October 2010, Watts began to suffer from debilitating joint pain. After being

hospitalized, Watts was diagnosed with drug-induced lupus and drug-induced hepatitis, both allegedly side effects of her use of Solodyn. Although she has recovered from the hepatitis, doctors predict that she may suffer from lupus for the rest of her life.

Watts filed a complaint against Medicis, alleging consumer fraud, product liability, and punitive damages claims. She alleged that Medicis knowingly used false pretenses and omitted material facts from the information presented to her regarding Solodyn's risks in order to induce her to buy and use Solodyn. She also alleged that the drug was unreasonably dangerous because Medicis failed to provide adequate warnings of its known dangers.

In response to Watts's complaint, Medicis filed a motion to dismiss for failure to state a claim under Arizona Rule of Civil Procedure 12(b)(6), which the trial court granted in December 2012. Watts filed a timely Rule 59 motion for new trial, which the trial court denied in a signed order in April 2013.

Watts appealed the trial court's dismissal of her complaint and denial of her motion for new trial. The primary issues on appeal were whether the common law learned intermediary doctrine ("LID") is inconsistent with Arizona's comparative fault tort system and whether Arizona's Consumer Fraud Act ("CFA") applies to consumer advertising by a drug manufacturer or seller.

In an opinion filed January 29, 2015, the court of appeals vacated the trial court's dismissal of Watts's complaint and remanded for further proceedings. The court held that the CFA applies to the sale and advertisement of prescription medications and that Watts adequately pled the elements of a private cause of action under the CFA. Op. ¶¶ 26-27. The court further held that the LID is inconsistent with Arizona's Uniform Contribution Among Tortfeasors Act ("UCATA"), and that Watts has identified a legal theory—that she relied on manufacturer-provided informational materials—under which she may be entitled to relief, meaning her claim does not fail as a matter of law. *Id*. ¶¶ 38, 40. Medicis filed its petition for review on April 1, 2015. Watts filed her amended response on June 9.

ISSUES FOR WHICH REVIEW WAS GRANTED:

1. Did the court of appeals err and create bad policy by abolishing the widely accepted, longstanding LID on the ground that it conflicts with Arizona's UCATA?

2. Did the court of appeals erroneously permit Watts to proceed with a consumer fraud claim where no direct "merchant-consumer transaction" is possible because prescription drugs are not ordinary goods sold directly to patients?

3. Did the court of appeals contravene federal law by treating "patient informational materials" Watts received from her physician and pharmacist as DTC [direct to consumer] marketing materials?