

SUPREME COURT OF APPEALS OF WEST VIRGINIA

White v. Wyeth, 227 W. Va. 131

705 S.E.2d 828 (2010) · No. No. 35296 · Decided December 17, 2010

SUMMARY

The Supreme Court of Appeals of West Virginia addressed a certified question concerning whether the West Virginia Consumer Credit and Protection Act requires reliance on an alleged deceptive act to establish causation in a private action. The court held that a private plaintiff must prove unlawful conduct, ascertainable loss, and a causal connection; reliance is required when the claim involves affirmative misrepresentations, while other deceptive practices may be established through proximate-cause evidence. The court further discussed the application of these principles to claims involving prescription hormone-replacement drugs.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice McHugh; Senior Status Judge Fox, sitting by temporary assignment; Judge Aboulhosn, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	December 17, 2010
DOCKET	No. 35296
DISPOSITION	remanded
PROCEDURAL POSTURE	The Supreme Court of Appeals of West Virginia reviewed a certified question from the Putnam County Circuit Court concerning whether the West Virginia Consumer Credit and Protection Act requires reliance on an alleged deceptive act to establish causation in a private action.
STANDARD OF REVIEW	De novo review applies to questions of law answered and certified by a circuit court.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Wyeth, f/k/a American Home Products, d/b/a Wyeth-Ayerst Laboratories, Dannemiller Memorial Education Foundation, Ketchum, Inc. v. Shirley White, Cathy Dennison, Jenny Tyler, Class of others similarly situated

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QUESTIONS PRESENTED

1. Whether the phrase "as a result of" in West Virginia Code section 46A-6-106(a) requires proof of reliance on alleged affirmative misrepresentations to establish causation in a private WVCCPA action.
2. Whether a private WVCCPA cause of action extends to purchases of prescription drugs.

HOLDINGS

1. A private cause of action under West Virginia Code section 46A-6-106(a) requires proof of unlawful conduct by a seller, an ascertainable loss by the consumer, and a causal connection between the unlawful conduct and the loss.
2. When the alleged deceptive practice involves an affirmative misrepresentation, reliance on the misrepresentation must be proven to establish the required causal connection. Reliance is not invariably required where the claim concerns concealment, suppression, or omission; in those circumstances, causation may be shown by proving that, but for the deceptive conduct, a reasonable consumer would not have purchased the product and suffered the loss.
3. The private cause of action under West Virginia Code section 46A-6-106(a) does not extend to prescription-drug purchases under the circumstances presented.

KEY QUOTATIONS

"Thus, a private cause of action under the provisions of West Virginia Code § 46A-6-106(a) of the West Virginia Consumer Credit and Protection Act must allege: (1) unlawful conduct by a seller; (2) an ascertainable loss on the part of the consumer; and (3) proof of a causal connection between the alleged unlawful conduct and the consumer's ascertainable loss." (at 837)

"Where the deceptive conduct or practice alleged involves affirmative misrepresentations, reliance on such misrepresentations must be proven in order to satisfy the requisite causal connection." (at 837)

"Accordingly, for the reasons stated above, we find that the private cause of action afforded consumers under West Virginia Code § 46A-6-106(a) does not extend to prescription drug purchases." (at 838)

FACTUAL BACKGROUND

Respondents purchased prescription hormone-replacement therapy drugs and sued Wyeth and related defendants under the WVCCPA, alleging unfair and deceptive practices in promoting the drugs to physicians and patients. Their complaint did not allege that the respondents or their physicians received, read, or relied on the alleged misrepresentations. The court concluded that prescription-drug purchases did not establish the causal connection

required for a private WVCCPA action because the prescribing physician, rather than the consumer, determines which product is purchased.

PROCEDURAL HISTORY

Respondents filed a putative class action under the WVCCPA based on alleged deceptive promotion, advertising, marketing, and labeling of hormone-replacement drugs. The circuit court denied Wyeth's motions to dismiss and for summary judgment based on lack of standing, concluding that reliance was not required but certifying the issue to the Supreme Court of Appeals. The Supreme Court accepted review, reformulated the certified question, answered it in the affirmative, and directed dismissal of the action on remand.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The circuit court was instructed to enter an order dismissing the case in accordance with the new point of law.

CASES CITED

- *Gallapoo v. Wal-Mart Stores, Inc.*, 197 W. Va. 172, 475 S.E.2d 172 (1996)
- *Kincaid v. Mangum*, 189 W. Va. 404, 432 S.E.2d 74 (1993)
- *Clendenin Lumber & Supply Co. v. Carpenter*, 172 W. Va. 375, 305 S.E.2d 332 (1983)
- *Findley v. State Farm Mutual Auto. Ins. Co.*, 213 W. Va. 80, 576 S.E.2d 807 (2002)
- *Cox v. Amick*, 195 W. Va. 608, 466 S.E.2d 459 (1995)
- *Smith v. State Workmen's Compensation Commissioner*, 159 W. Va. 108, 219 S.E.2d 361 (1975)
- *McFoy v. Amerigas, Inc.*, 170 W. Va. 526, 295 S.E.2d 16 (1982)
- *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995)
- *Webb v. Sessler*, 135 W. Va. 341, 63 S.E.2d 65 (1950)
- *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639, 128 S. Ct. 2131, 170 L. Ed. 2d 1012 (2008)
- *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (1999)
- *Sanders v. Francis*, 277 Or. 593, 561 P.2d 1003 (1977)
- *Group Health Plan, Inc. v. Philip Morris, Inc.*, 621 N.W.2d 2 (Minn. 2001)
- *Tucker v. Blvd. at Piper Glen LLC*, 150 N.C. App. 150, 564 S.E.2d 248 (2002)
- *Feitler v. The Animation Celection, Inc.*, 170 Or. App. 702, 13 P.3d 1044 (2000)
- *Schnall v. AT&T Wireless Services, Inc.*, 168 Wash. 2d 125, 225 P.3d 929 (2010)
- *New Jersey Citizen Action v. Schering-Plough Corp.*, 367 N.J. Super. 8, 842 A.2d 174 (2003)
- *State ex rel. McGraw v. Bear, Stearns & Co., Inc.*, 217 W. Va. 573, 618 S.E.2d 582 (2005)
- *De Bouse v. Bayer AG*, 235 Ill. 2d 544, 337 Ill. Dec. 186, 922 N.E.2d 309 (2010)
- *State ex rel. Johnson & Johnson Corp. v. Karl*, 220 W. Va. 463, 647 S.E.2d 899 (2007)

- UMWA by Trumka v. Kingdon, 174 W. Va. 330, 325 S.E.2d 120 (1984)

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