

WAWRIK, EBROYAN & CENICEROS
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ASHLEY COUNTY, ARKANSAS v PFIZER, INC
552 F.3d 659 (8th Cir. 2009)

Arkansas has one of the largest numbers of small toxic labs in the US and incurred high costs for fighting the meth epidemic, and is seeking reimbursement for the funds that the Arkansas counties used to control and fight out the epidemic.

Is Pfizer Inc ethically responsible to pay back the counties for the funds used to fight off the meth epidemic?

Explain # 1 -The Appeals court applied Arkansas law and found that “we reject the counties’ claim that the district court inappropriately applied the summary judgment standard rather than the standard applicable to a judgment on the pleadings. Although the one page judgment referred to the defendants’ motion for summary judgment, the 13- page order correctly identified the motion as a motion for judgment on the pleadings. Upon careful review of the order, we are satisfied that the district court properly limited it’s consideration to the facts

Explain # 2 - According the Arkansas Law “there must be an operative act, intent or situation to make the enrichment unjust and compensable” The counties allegation that the drug manufactures have violated state or deferral law or a state regulation governing the manufacturing distribution, packaging or the sale of their drugs. The court state that a party is free from fault cannot be held to be unjustly enriches merely because it has chosen to exercise a legal or contractual right”. Therefore the drug companies according to Arkansas Law are not liable for exercising their legal and contractual right to do business in the state. Thus the Appeals court found the drug manufacturers weren’t unjustly enriched.

Explain # 3- Unjust enrichment is based on “implied contract theory of recovery”. According to Arkansas Law “courts will only imply a promise to pay for services where they were rendered in such circumstances as authorized the party performing them to entertain a reasonable expectation of their payment by the party beneficiary. “The court found that the counties didn’t provide services in which they now want payment. The Appeals court felt that the drug manufacturers are not beneficiaries of the services provided by the counties. The law enforcement, social services, and inmate housing weren’t provided by the counties with the expectation that the drug manufacturers would cover the expenses. Therefore the Appeals Court found no implied contract between the counties and the drug manufacturers to indicate any Unjust Enrichment received by them.

Explain # 4- In order to be able to pursue a cause of action for a nuisance in Arkansas, the “nuisance must...be the natural and proximate cause of the injury.” *Taylor Bay Protective Ass’n v. Adm’r, U.S. E.P.A., 884 F.2d 1073, 1077 (8th Cir. 1989)*. To protect their citizens, the Arkansas Deceptive Trade Practice Act makes it unlawful to be a part of “any...unconscionable,

false, or deceptive act or practice in business, commerce, or trade,” (Ark. Code Ann. § 4-88-107(a)(10)), and it allows the victim of the crime to provide a civil cause of action to anyone who suffers injuries or damages by reason of conduct by another person that the state law of Arkansas would constitute as a felony. Recovery is allowed only when there’s an ADTPA violation or by reason of another person’s criminal actions can the Arkansas statutes at issue includes a proximate cause. A proximate cause, can be an event that although may not be the original cause, it is sufficiently related to the injuries or damages to be held responsible for the injuries and damages incurred.

Explain # 5- Arkansas common law incorporates common law practices the doctrine of intervening acts which reflects the limits that society places on a defendant’s liability for his actions. An intervening act has no relation with the original act, and doesn’t waive the responsibility of the original act of liability if the injuries and damages are the natural and probable outcome of the original act and injury “might reasonably have been foreseen as probable:” (Sannon v. Wilson, 329 Ark 143, 947 S.W.2d 349,356(1997)). A key element is a foreseeable event, taking as an example the reversing jury verdict against the machine manufacturer where dealer’s removal of shield prior to selling spreader to a farmer was not and could not be a foreseeable act by the manufacturer where the dealer’s act of removing the safety shield from the fertilizer spreader prior to selling the spreader was an efficient intervening cause to prohibit imposing liability on the manufacturer for the farmer’s injury (Young, 290 Ill.Dec 504.821 N.E.2d at 1086).

Explain # 6 – The issue in question is whether the intervening causes are the natural and probable consequences of the Defendants’ sales of cold medicine to retail store and if the counties expenses for the production of methamphetamine was a foreseeable event that could have been foreseen by the manufacturer of the cold and allergy medication.

Explain # 7 - What this is saying is that the counties believe the criminal actions in the legal field of methamphetamine is enough to stand as the "cause" of injury. The court then goes on to say that Arkansas law will not coincide with the belief that the "natural and probable consequences" of manufacturers, abiding by all laws in a highly regulated-but totally legal-business, are the cause of a methamphetamine epidemic in society.

The court says this is a matter of law and gives the notable example that it is not a "natural and probable consequence" that, in the event of a the lawful sale of a handgun, the weapon will be used in a crime.

Explain # 8 -Here, the court is saying that proximate cause will be the way used to limit liability. This is also used in cases where commercial lawsuits (for example, liquor, antidepressants, video games, etc.) happen-in order to address societal problems. The court then states the statutes the countries assert in their favor, and refute the counties allegations application of the law, since the drug dealer liability act is meant to apply to "Damages caused by use of an illegal drug by an individual" And that any ruling that holds the manufacturer of pseudo ephedrine, a legal cold medicine, to be liable for societal costs, of the effects of the illegal drug methamphetamine, as opposed to the individual drug users, as stated by the law, is not a great argument.

Explain # 9 - Pfizer Inc. won the case. The courts use proximate cause to assign, or limit, liability. Since the societal problems were not "caused" simply by the legal sale and manufacture of a product, the counties allegations were dismissed