

## ILLINOIS

By: Kurtis B. Reeg  
GALLOP, JOHNON & NEUMAN  
Interco Corporate Tower  
101 S. Hanley  
St. Louis, Missouri 63105

### The Learned Intermediary Doctrine

The "learned intermediary doctrine" was adopted in Illinois in *Kirk v. Michael Reese Hospital and Medical Center*, 111 Ill. Dec. 944, 513 N.E.2d 387 (Ill. 1987):

Manufacturers of prescription drugs have a duty to warn prescribing physicians of the drugs' known dangerous propensities, and the physicians, in turn, using their medical judgment have a duty to convey the warnings to their patients.

The drug manufacturer generally communicates warnings relating to prescription drugs to the medical profession through package inserts, the PDR, "Dear Doctor" letters, detailmen and through other measures. The doctor, functioning as a learned intermediary between the prescription drug manufacturer and the patient, decides which available drug best fits the patient's needs and chooses which facts from the various warnings should be conveyed to the patient, and the extent of disclosure is a matter of medical judgment. *Id.* at 951-52.

### The Doctrine as a Springboard for Summary Judgment

In *Tongate v. Wyeth Laboratories*, 162 Ill. Dec. 801, 580 N.E.2d 1220 (1st Dist. 1991), Wyeth moved for upholding the entry of summary judgment on three grounds:

(1) the information contained in the inserts provided in each of the packages was adequate as a matter of law; (2) the "learned intermediary doctrine" applied; and (3) the prescribing physician did not rely on the information provided in the inserts as he had sufficient information from other sources to enable him to act as a learned intermediary.

The appellate court found that the issue of whether the warning was adequate as a matter of law was not properly before the court. Additionally, such an issue was a question of fact that could not be resolved by summary judgment. *Id.* at 805.

Next, Wyeth contended that the "learned intermediary doctrine" applied if it showed that the physician was properly warned, regardless of the source of the warning, of any potential dangers in the use of the drug regardless of any inadequacy of the warning. *Id.* Therefore, the issue was whether the record established, as a matter of law, that the prescribing physician

possessed sufficient information from any source that would show he was properly warned before he prescribed the drug. *Id.* The court looked to the two depositions given by the prescribing physician. In the first deposition, the physician stated that he was generally aware of severe reactions to vaccines. The trial court granted summary judgment on this basis. In a second deposition, however, the physician stated that he had not heard of any negative reaction to the specific vaccine at issue in the case. *Id.* at 806-07. The physician then testified that even if the package insert had been revised to include warnings of neurological reactions, he would not have transmitted those warnings to the plaintiff. He later testified that if the package insert had included the warnings of the reactions and had he been aware of the patient's past reactions to similar injections, he would have asked the plaintiff to contact his personal physician to verify the allergic reaction. *Id.* at 807. The trial court, in a motion to reconsider, upheld its decision to grant summary judgment. *Id.* at 808.

The Court found, on the basis of the deposition testimony, that a question of fact existed as to whether the physician had prior knowledge from any source that the injection could cause the injuries suffered by the plaintiff. *Id.* at 809. Wyeth countered with *Ashman v. SK & F Lab Co.*, 702 F. Supp. 1401 (N.D. Ill. 1988). The *Tongate* court distinguished that decision which granted summary judgment. In *Ashman*, the plaintiff conceded that the physician was a learned intermediary. Also, the evidence in *Ashman* clearly established that the physician was aware of the possible negative interactive effect between the pharmaceuticals at issue. The plaintiff's own expert in *Ashman* testified that, based on the information provided by the pharmaceutical company and the PDR, the interaction which occurred was predictable. Finally, there was no evidence that the physician in *Ashman* consulted the warning inserts at the time he prescribed the drug. The *Tongate* court found that there was a question of fact as to whether its physician relied on the defendant's label. *Id.* at 810. Accordingly, summary judgment was reversed.

### Practice Pointers

Because of the length of the case, the *Tongate* decision could not be thoroughly discussed in this brief outline. Consequently, when faced with a potential summary judgment situation in Illinois on the "learned intermediary doctrine," I strongly recommend a review of the *Tongate* decision.

Additionally, the four factors noted in my discussion of Tennessee law also apply. Whether the warning label is adequate as a matter of law is probably not a basis for summary judgment in Illinois. Thus, the primary focus should be on the prescribing physician's general knowledge of the specific danger alleged by the plaintiff and/or the prescribing physician's reliance on the information contained in your client's inserts.