

THE LITIGATION DEPARTMENT
U.S. Product Liability Law
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Product Liability Update #16 - Jurisdiction Over Foreign Companies

WIGGIN AND DANA

Counsellors at Law

For more information on U.S. product liability law please contact:

Remy Zimmermann
+1 203.498.4316
jzimmermann@wiggin.com

Shaun Sullivan
+1 203.498.4315
ssullivan@wiggin.com

Alan Schwartz
+1 203.498.4332
aschwartz@wiggin.com

or visit us at

www.wiggin.com

I came across an interesting decision by a California appellate court today (*F. Hoffman-La Roche v. The Superior Court of Santa Clara County*). The underlying case arose from a tragic situation in which a 14-year old boy who had been taking the acne medication Accutane for six months committed suicide by throwing himself in front of an oncoming railroad train. His parents claimed that the drug made their son suicidal and sued six "Roche Group" pharmaceutical companies. Included were F. Hoffman-La Roche Ltd. (a Swiss company which "only sells the active ingredient in Accutane in Switzerland to the domestic U.S. Roche affiliates that manufacture and sell the drug" in the U.S.), Roche Holding Ltd. (the Swiss parent of F. Hoffman and the Roche companies (New Jersey corporations which made and sold Accutane in the U.S.), and two New Jersey Roche corporations (which were wholly owned by Roche Holding Ltd.)

Plaintiffs admitted that the Swiss companies themselves did not have sufficient minimum contacts with California to justify jurisdiction but claimed that jurisdiction was proper pursuant to the "representative services" doctrine -- "a species of agency that permits ... jurisdiction over a foreign defendant where that entity is the principal of a related domestic entity that functions merely as its instrumentality or agent." The appellate court disagreed.

The court found that "although all the Roche companies are affiliated, each Swiss defendant was a distinct and separate company, with its own board and assets, and each company maintained its own separate corporate records, bank accounts, and other financial and accounting books and records." Additionally the court explained, "for purposes of jurisdiction, the analysis begins with the firm proposition that neither ownership nor control of a subsidiary ... without more, subjects the parent to the jurisdiction of the state where the subsidiary does business.... degree of control must veer into management by the exercise of control over the internal affairs of the subsidiary and the determination of how the company will be operated on a day-to-day basis....here, the degree of control ... exercised by any Swiss entity was not pervasive or continual, and it did not exceed that ordinary and necessary degree of control incident to ownership of a subsidiary..." (internal citations omitted)

Furthermore, the court refused to find jurisdiction because of extensive cooperation and coordination between the Swiss companies and their foreign affiliates concerning product safety matters. "Here, a holding that jurisdiction over the Swiss defendants should be exercised due solely to their global collaborative drug safety efforts would ultimately discourage such laudable ...efforts ... and lead to the balkanization of drug safety data"

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Although theoretically irrelevant, it is interesting that at the very end of its opinion the court pointed out that the plaintiffs "are not left without a remedy; there is no jurisdictional barrier to the pursuit of their claims against the U.S. Roche defendants, and no hint in this record that these domestic companies are incapable of responding in damages in the event of an adverse result."

A word of caution: This is a California decision interpreting California law. As pointed out in the decision, courts in New Jersey and Florida in other cases have sustained jurisdiction over the Swiss Roche defendants. The law can vary from state to state and the evidence presented in each case may not be the same. Having said that, I find the California opinion to be well-reasoned and persuasive.

Hope this is helpful. As always, please let me know if you have questions or comments.

Best regards,

Remy

The Wiggin and Dana U.S. Product Liability Law E-Newsletter is a periodic newsletter designed to inform clients and others about recent developments in the field of product liability law. Nothing in the E-Newsletter constitutes legal advice, which can only be obtained as a result of personal consultation with an attorney. The information published here is believed to be accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues. If you have any requests for topics or other suggestions, please contact Remy Zimmermann 203.498.4316, jzimmermann@wiggin.com.

One Century Tower
P.O. Box 1832
New Haven CT
06508-1832
Telephone 203.498.4400
Telefax 203.782.2889

400 Atlantic Street
P.O. Box 110325
Stamford CT
06911-0325
Telephone 203.363.7600
Telefax 203.363.7676

450 Lexington Avenue
Suite 3800
New York NY
10017-3913
Telephone 212.490.1700
Telefax 212.490.0536

One CityPlace
185 Asylum Street
Hartford CT
06103-3402
Telephone 860.297.3700
Telefax 860.525.9380

Quaker Park
1001 Hector Street, Ste. 240
Conshohocken PA
19428-2395
Telephone 610.834.2400
Telefax 610.834.3055