

The Indiana Supreme Court affirms summary judgment in favor of a group of plastic medicine cup manufacturers in a wrongful death case.

In this multi-defendant case, Dina M. Cox of Lewis Wagner, LLP was the first to move for summary judgment before the trial court on behalf of her product distributing clients; the other manufacturing defendants then followed suit. Ms. Cox deposed plaintiffs' pharmacy expert who was identified to defeat summary judgment; and, thereafter, she moved to exclude his opinions in concert with the other defendants. Ms. Cox coordinated the joint summary judgment reply on behalf of the defense, and she and John Nell of Wooden McLaughlin handled oral argument before the trial court. Summary judgment was granted in favor of the cup defendants. When this ruling was appealed by plaintiffs, Lewis Wagner led appellate briefing efforts before the Indiana Court of Appeals. Although the Court of Appeals revised the trial court ruling, the Indiana Supreme Court (on transfer) agreed that summary judgment was appropriate for the cup defendants.

Kovach v. Caligor Midwest, et al., Indiana Supreme Court No. 49S04-0902-CV-88

On September 8, 2009, the Indiana Supreme Court affirmed summary judgment in favor of a group of plastic medicine cup manufacturers in a wrongful death case. In so doing, it reversed an opinion from the Indiana Court of Appeals standing for the proposition that omitted warnings create a presumption of causation that defeats summary judgment.

The Kovach case involved a minor who died of an accidental overdose of acetaminophen with codeine while recuperating from surgery. The cup used to administer the medicine was a plastic, translucent cup with a capacity of 30 milliliters. Just 15 milliliters was prescribed. The facts were undisputed that the administering nurse was familiar with the cup, and that the autopsy showed more than twice the prescribed level of medication in the minor's bloodstream. The nurse testified that she had filled the cup approximately half-way, although the minor's father testified that he witnessed the nurse administer a full cup of the medicine.

The minors' parents sued on the theory that the cup was not suitable for precision measurement, and that there should have been a corresponding warning. This argument was supported by the affidavit of an expert who testified that the cup had a 20 to 30% margin for error, but no warning with respect to that margin. After the trial court granted summary judgment based upon a lack of proximate cause, the Court of Appeals reversed, holding that there was a question of fact because the lack of a warning created a presumption of causation. The Court of Appeals explained that plaintiffs are not required to show that they would have read and heeded an adequate warning.

The Supreme Court said that although cause-in-fact is typically a factual question reserved for determination by the jury, it becomes a question of law for the court where reasonable minds cannot differ. The Supreme Court held that summary judgment was appropriate based upon the cause-in-fact issue because the minor was administered more than twice the prescribed dose of the medication, whereas the plaintiffs' expert testified that the cup had just a 20 to 30% margin for error. As stated by the Court, "the 'read-and-heed' presumption does not completely dispose of the causation issue in a failure-to-warn case. The most the presumption does is establish that a warning would have been read and obeyed. It does not establish that the defect in fact cause the plaintiff's injury."